

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(BALTIMORE)

HOWARD RICE) CRIMINAL NO.: 1:04-CR-00323-WDQ
(Movant/Petitioner))
vs.) D.J. WILLIAM D. QUARLES, JR.
UNITED STATES OF AMERICA)
(RESPONDENT/GOVERNMENT))

WDQ 12 cv 3648

APPENDIX OF EXHIBITS IN SUPPORT OF
PETITIONER'S 28 U.S.C. 2255(f)(4) MOTION

EXHIBITS 1 THRU 8

RESPECTFULLY SUBMITTED:

HOWARD RICE
PRO SE PETITIONER
REG. NO. 41214-037
LSCI ALLENWOOD
P.O. BOX 1000
WHITE DEER, PA 17887

Ex. 1

Stephen H. Sacks, Esq.
May 6, 2004
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Factual and Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the statement of facts set forth in Attachment A hereto and to the following applicable sentencing guidelines factors:

a. Based on facts readily provable by the Government prior to any statements made by the Defendant, it was reasonably foreseeable to the Defendant and within the scope of the jointly undertaken criminal activity that the conspiracy distributed and possessed with the intent to distribute at least 3 kilograms but less than 10 kilograms of heroin. Accordingly, pursuant to U.S.S.G. §§ 2D1.1(a)(3), 2D1.1(c)(3), and 1B1.3, the base offense level is 34.

b. This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the Defendant's acceptance of personal responsibility for his conduct. This Office may oppose any adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

c. In accordance with the above, the applicable offense level would be 31.

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

8. This Office and the Defendant agree that no other offense characteristics, sentencing guidelines factors, potential departures or adjustments will be raised or are in dispute.

Obligations of the United States Attorney's Office

9. In consideration of his plea to the above offense, the Defendant will not be further prosecuted criminally by this Office for his participation in a conspiracy to distribute and possess with intent to distribute heroin from in or about the Fall of 2003 through in or about February 2004, as charged in Count One of the Indictment, except for criminal tax violations related to that offense, as to which this

Stephen H. Sacks, Esq.
May 6, 2004
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Office cannot, and does not, make any agreement. This Agreement does not provide any protection against prosecution for any crimes except as set forth above.

10. At the time of sentencing, this Office will recommend a sentence within the applicable guideline range. At the time of sentencing, this Office will move to dismiss any open counts against the Defendant.

11. This Office reserves the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Indictment that this Office has agreed to dismiss at sentencing.

Waiver of Appeal

12. The Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal whatever sentence is imposed, including any fine, term of supervised release, or order of restitution and any issues that relate to the establishment of the guidelines range, reserving only the right to appeal from an upward or downward departure from the guidelines range that is established at sentencing. Nothing in this agreement shall be construed to prevent either the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35, and appealing from any decision thereunder, should a sentence be imposed that exceeds the statutory maximum allowed under the law or that is less than any applicable statutory mandatory minimum provision. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Court Not a Party

13. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND, NORTHERN DIVISION

UNITED STATES OF AMERICA,

v. CRIM. NO.: WDQ-04-0323
HOWARD RICE, et al., CRIM. NO.: BEL-04-084
CIVIL NO.: WDQ-06-223

MEMORANDUM OPINION AND ORDER

Pending is Howard Rice's and Raeshio Rice's motion to dismiss the superseding indictment in Criminal No. WDQ-04-0323 and to enforce their plea agreements with the government. Raeshio Rice has also filed a petition under 28 U.S.C. § 2255 (Civil No. 06-223) to vacate, set aside or correct his sentence in Criminal No. BEL-04-084.¹ For the following reasons, the motion to dismiss will be denied, and Raeshio Rice's petition will be granted.

I. Background

A. Raeshio Rice's Agreement

On February 19, 2004 Howard and Raeshio Rice were indicted for conspiracy to distribute heroin.

¹Howard Rice also filed a motion under 28 U.S.C. § 2255. On September 6, 2006, the Court granted his oral motion to withdraw his § 2255 motion without prejudice.

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acceptance of responsibility. Ward testified that the beginning of Raeshio's sentencing range would have been 292 months.

Under option three, Ward testified that if Raeshio cooperated he might be able to get 9 years or less. Under the fourth and final option, Raeshio could go to trial and face a possible life sentence.

Ward testified that there was no discussion of Raeshio's culpability for murders during the reverse proffer. *Id.* at 35.

Raeshio reluctantly decided to accept Option 1. On April 26, Ward received the government's first plea offer and two days later met with Raeshio to review the agreement. Ward testified that he thought the plea meant that the government would not further prosecute Raeshio. *Id.* at 30-31, 53. Ward understood the final paragraph of the agreement to immunize Raeshio from further prosecution:

This agreement does not bind any federal, state, or local prosecuting authority other than this office. This agreement constitutes the complete plea agreement in this case. There are no other agreements, promises, understandings or understandings between the Defendant and this Office other than those set forth in this agreement, and none will be entered into unless in writing and signed by all parties.

Defense Ex. 4, ¶ 14. Raeshio rejected the first plea letter because of its 168-210 month sentence range. See *Tr.* at 37-38, 44-46.

During his May 5, 2004 telephone conference with Ward, Weinstein extended the May 3, 2004 deadline for accepting Option

On June 26, 2006, Peter Ward, Esquire, Raeshio Rice's counsel in BEL-04-084, testified that on April 12, 2004 he spoke with AUSA Jason Weinstein. Weinstein suggested that Raeshio would receive an extremely generous plea offer if it was accepted by May 3, 2004. Evidentiary Hearing Tr. ("Tr.") at 22. During their telephone conversation, they scheduled a reverse proffer session for April 19.

On April 19, 2004, Raeshio Rice attended the reverse proffer session. Ward testified that only he took notes at that meeting and charges more serious than those in the pending indictment were discussed. *Id.* at 25. Weinstein presented four options for Raeshio. Ward testified that under the first plea option, if Raeshio pled to the original indictment by May 3, 2004 then his guidelines calculation would start at base offense level 36, he would receive no upward adjustment for leadership and would receive a three level downward adjustment for acceptance of responsibility, resulting in a 168-210 month guideline range. Ward understood that if Raeshio chose this option, there would be no superseding indictment; this was an attractive option for Raeshio.

Under the second option, if Raeshio pled guilty to the current indictment after May 3, 2004, his base offense level would be 38, he would receive a 2 level upward adjustment for his leadership role and only a two level downward adjustment for

1, and Ward communicated Raeshio's desire for a 10 year sentence. On May 6, Ward received a new plea offer. Ward thought that the only changes in the offer were in the date by which Raeshio must accept and in a reduction to adjusted offense level 31. *Id.* at 51. Ward testified that he did not completely read the new plea letter. *Id.*

The new plea agreement stated:

In consideration of his plea to the above offense, the Defendant will not be further prosecuted criminally by this Office for his participation in a conspiracy to distribute and possess with intent to distribute heroin from or about the Fall of 2003 through in or about February 2004, as charged in Count One of the Indictment, except for criminal tax violations related to that offense, as to which this Office cannot, and does not, make any agreement. This Agreement does not provide any protection against prosecution for any crimes except as set forth above.

Defense Ex. 6, ¶ 9. Ward testified that the paragraph was not brought to his attention and that he did not notice it. *Tr.* at 51. At Ward's urging, Raeshio accepted this new plea offer. Ward understood that the agreement would bar subsequent indictments. *Id.* at 44, 52 (stating that he believed the first plea offer "took care of the whole situation" and that the second offer was "the same as the original").

Raeshio accepted the new plea offer on May 14, 2004. On January 26, 2005, Raeshio received a 147 month sentence.

Ward was "shocked" when he learned of the superseding indictment, and discussed the case with Raeshio's new attorney. *Id.* at 66-67.

Ward acknowledged that the wording in the plea agreement was clear and--had he read it--he would not have allowed Raeslio to sign the second agreement. *Id.* at 50-51.

B. Howard Rice's Agreement

Stephen Sacks, Esquire, Howard Rice's attorney in BEL-04-084, testified about Howard's reverse proffer session on April 7, 2004 at which two homicides were discussed; Howard was also told that if he did not plead guilty, his father would be indicted and the murder investigations would be pursued. *Id.* at 118-19.

AUSA Weinstein presented three options to Howard Rice. According to Sacks, under Option 1, Howard would go to trial based on a superseding indictment and face a likely sentence of 360 months to life. Under Option 2, Howard could plead guilty, cooperate, and receive a four level downward departure. Under Option 3, Howard could plead guilty without cooperation and receive a 14 to 15 year sentence. Sacks thought that Option 3 was a good deal for Howard because it would protect his father from future prosecution and avoid the larger conspiracy.

Under the second and third options, Sacks believed that if Howard pled by May 3, 2004, there would be no superseding indictments or murder prosecution. *Id.* at 127, 165. Indeed, based on conversations with Weinstein at the reverse proffer, Sacks believed that all plea options included immunity. *Id.* at 142. Sacks believed that the only difference between the second

and third options was in the time to be served. *Id.* at 132.

Sacks testified that he attempted to lower the possible sentence by negotiating a lower quantity of heroin to be admitted and by negotiating a lower criminal history for Howard. The plea offer Sacks received on April 23, 2004 contained a 14 to 15 year sentence; this offer was not accepted because Howard wanted a 10 year sentence. An extension of time was requested by Sacks and granted by Weinstein.

The second plea offer was received on May 8, 2004. Sacks reviewed the offer with Howard but did not notice any changes other than the duration of sentence. Sacks testified that this latter agreement contained an additional paragraph that was not pointed out to him. *Id.* at 148-49. He testified that he was unaware of the change but acknowledged that a clear reading of paragraph nine allowed a superseding indictment to be filed. *Id.* at 149. Sacks stated that had he noticed it, the offer would not have been accepted. See *id.* at 153.

Howard accepted the plea offer. On October 27, 2004, Howard received a 135 month sentence.

Sacks was no longer representing Howard when he was shocked by the news of the superseding indictment. *Id.* at 188.

C. The Superseding Indictment

On February 1, 2005, the government indicted Raeslio and Howard Rice for racketeering, distribution of a controlled

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substance and murder. Two additional superseding indictments⁷ have been filed.

D. Other Evidence

Joshua Treem, Esquire, was qualified as an expert on federal criminal practice in the District of Maryland and testified that Raeslio and Howard should not have accepted the plea offers because they clearly permitted the prosecutors to seek later indictments. Treem testified that the first plea offers contained no assurances of immunity. *Id.* at 189.

Treem also opined that sometimes immunity is discussed but not set out in writing and it would be reasonable for a defense attorney to assume that in the absence of a writing, an immunity agreement existed if there had been an affirmative representation made by the AUSA. *Id.* at 190. Moreover, he has seen immunity provisions even when the defendant does not cooperate.

Treem opined that the prosecutor should have identified the changes in the plea offers and the defense attorneys should have reviewed the plea offers before their clients accepted them. *Id.* at 197. He testified that in similar situations he has insisted upon written immunity provisions. *Id.* at 199, 202-03.

Howard Rice testified that, upon the advice of Sacks, he

believed that he would not be subject to further prosecution if he signed the plea agreement and believed that his failure to cooperate did not bar his immunity. *Id.* at 255, 258-59. Howard testified that the provisions in the second plea offer were not explained to him by his counsel. *Id.* at 260-61.

Raeslio Rice testified that, upon the advice of Ward, he believed that he would not be prosecuted further if he pled guilty. *Id.* at 262. Raeslio could not recall discussing the additional provisions in the plea agreement with his counsel. *Id.* at 262-64.

William Nickoles, a Narcotics Detective with the Baltimore City Police Department, who is deputized for the DEA, testified that the Rice investigation was ongoing after the first indictment was filed. According to Nickoles, authorities were continuing to investigate cocaine and murder charges involving the Rices.

Nickoles testified that, at the reverse proffer sessions, Weinstein never promised that future charges would be avoided if the Rices pled guilty. *Id.* at 270. Rather, Weinstein said that the only way to get immunity was with full cooperation. *Id.*

Charles W. Hedrick, a Senior Analyst with the DEA who has 35 yrs. of law enforcement experience, testified that the reverse proffer was designed to get the Rice brothers to cooperate. He testified that the only opportunity available to the defendants

⁷In the second superseding indictment, filed on October 11, 2005, the controlled substance was identified as cocaine. The third superseding indictment, filed on August 16, 2006 added additional counts.

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Ex. 2

GOVERNMENT'S EXHIBIT NO. 1
CASE NO. WDQ-04-0323
IDENTIFICATION: 10/19/06
ADMITTED: 10/19/06

*United States Attorney
District of Maryland
Northern Division*

*Rod J. Rosenstein
United States Attorney*

*Steven H. Levin
Deputy Chief, Violent Crime Section*

36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201

410-209-4800
TTY/TDD: 410-962-4452
410-209-4916
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October 17, 2006

FILED ENTERED
LODGED RECEIVED

Teresa Whalen, Esq.
801 Wayne Avenue, Suite 400
Silver Spring, MD 20910

OCT 19 2006

Re: United States v. Howard Rice
Criminal No. WDO-04-0323

CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND

Dear Ms. Whalen:

This letter confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by October 18, 2006, it will be deemed withdrawn, and this Office will make no additional offers. The terms of the agreement are as follows:

Offenses of Conviction

1. The Defendant, your client, agrees to plead guilty to Counts One, Two, and Three of the Fourth Superseding Indictment pending against him, in which he is charged with racketeering, racketeering conspiracy, and conspiring to distribute and possess with intent to distribute five kilograms or more of cocaine in violation of Title 18, United States Code, Section 1962(c), Title 18, United States Code, Section 1962(d), and Title 21, United States Code, Sections 841(a)(1), (b)(1)(A), and 846, respectively. Additionally, the Defendant agrees to plead guilty to a one count Information pending against him, in which he is charged with conspiring to distribute and possess with intent to distribute one kilogram or more of heroin in violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(A), and 846. The Defendant admits that he is in fact guilty of these offenses and will so advise the Court.

Elements of the Offenses

2. The elements of the offenses to which the Defendant has agreed to plead guilty, and which the Government would prove if the case went to trial are as follows:

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instruct the jury that they could not draw any adverse inference from his decision not to testify.

c. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict to see if any errors were committed which would require a new trial or dismissal of the charges against him.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that a sentencing guidelines range for this case (henceforth the "advisory guidelines range") will be determined by the Court pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991-998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts which this Office would prove beyond a reasonable doubt as set forth below and to the following applicable sentencing guidelines factors:

a. Statement of Facts

From at least in or about 1995 and continuing until February 2004, the Defendant was the leader of a narcotics-trafficking organization whose members included, among others, Raeschio Rice, Anthony Leonard, Steven Campbell, Eric Clash, Keenan Dorsey, and Eric Hall (hereinafter the "Rice Organization"), a group of individuals associated in fact which engaged in, and the activities of which affected, interstate and foreign commerce. The Rice Organization constituted an ongoing

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October 17, 2006

organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

The Defendant conducted and participated in the conduct of the affairs of the Rice Organization's racketeering enterprise through engaging in a pattern of racketeering activity by committing multiple acts involving conspiracy to distribute cocaine and heroin and the distribution of and possession with intent to distribute cocaine and heroin, as described in Racketeering Acts One through Seven.

In furtherance of the Rice Organization's racketeering enterprise, from at least in or about 1995 and continuing until February 2004, the Defendant participated in a conspiracy with, among others, Raeschio Rice, Anthony Leonard, Steven Campbell, Vernon Jackson, Eric Clash, Travis Golder, Keenan Dorsey, Chet Pajardo, and Eric Hall to distribute and possess with intent to distribute multi-kilogram quantities of cocaine and heroin in the Baltimore area. The Defendant and his co-conspirators received cocaine from suppliers in California and New York, and heroin from suppliers in New York and elsewhere. The Defendant and his co-conspirators in turn distributed that cocaine and heroin to customers in the Baltimore area and then caused the proceeds of these cocaine and heroin transactions to be collected and transported back to the Rice Organization's suppliers. The locations used by the Defendant and his co-conspirators to conduct these transactions included a car wash on Quantico Avenue and the Red Door Lounge.

During the period charged in the conspiracy, the Defendant and his co-conspirators distributed and possessed with intent to distribute more than 150 kilograms of cocaine and more than 30 kilograms of heroin.

The Defendant used the proceeds of those narcotics transactions to finance purchases of, among other things, real property, jewelry, a Sea Ray boat, and luxury automobiles, including a Ferrari, a Jaguar, a Mercedes-Benz, two BMWs, a Cadillac, a Bentley, and several motorcycles, some of which were registered in the names of nominee owners to conceal their true ownership and to conceal the source of the funds used to purchase these assets.

The Government's evidence consists of, among other things, testimony by numerous cooperating witnesses; seizures of narcotics, narcotics proceeds, and other evidence; physical surveillance; and electronic surveillance, including audio interception devices in one of the Rice Organization's vehicles and several wiretaps on phones used by the organization.

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October 17, 2006

b. Sentencing Guideline Factors

Counts One and Two: RICO and RICO Conspiracy

1) Pursuant to U.S.S.G. § 2E1.1(a), the offense level to be applied to Counts One and Two is the greater of 19 or the offense level applicable to the underlying racketeering activity.

2) The base offense level for the underlying activity is governed by U.S.S.G. §§ 2D1.1(a)(3) and (c)(1). Pursuant to U.S.S.G. §§ 2D1.1(a)(3) and (c)(1), the base offense level is thirty-eight (38), based on the amount of cocaine distributed (more than 150 kilograms), and the amount of heroin distributed (more than 30 kilograms), amounts which were reasonably foreseeable to the Defendant during the course of the conspiracy.

Count Three of the Fourth Superseding Indictment and Count One of the Information: Cocaine and Heroin Conspiracy

3) Pursuant to U.S.S.G. §§ 2D1.1(a)(3) and (c)(1), the base offense level for Count Three of the Fourth Superseding Indictment and Count One of the Information is thirty-eight (38), based on the amount of cocaine distributed (more than 150 kilograms), and the amount of heroin distributed (more than 30 kilograms), amounts which were reasonably foreseeable to the Defendant during the course of the conspiracy.

Grouping

4) Pursuant to U.S.S.G. § 3D1.2(d), the base offense level for Counts One, Two, and Three of the Fourth Superseding Indictment and Count One of the Information is thirty-eight (38).

5) Because the Defendant was the organizer or leader of criminal activity that involved five or more persons and was otherwise extensive, a four-level increase is warranted, pursuant to U.S.S.G. § 3B1.1(a).

Acceptance of Responsibility

6) This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office will not make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease, based on the Defendant's failure to make a timely notification of his intention to plead guilty. This Office may oppose any adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item

Teresa Whalen, Esq.
October 17, 2006

in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

7) Based on the foregoing, the adjusted offense level would be forty (40).

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

8. This Office and the Defendant agree that, with respect to the calculation of the advisory guidelines range and application of the 18 U.S.C. § 3553(a) factors, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines or in 18 U.S.C. § 3553(a) will be raised or are in dispute.

9. At the time of sentencing, this Office will recommend a sentence of 30 years imprisonment. At the time of sentencing, this Office will move to dismiss any open counts against the Defendant. Furthermore, this Office will not object to the Court adjusting the sentence for any period of imprisonment already served on the undischarged term of imprisonment pursuant to U.S.S.G. § 5G1.3(b)(1).

10. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Indictment that this Office has agreed to dismiss at sentencing.

Forfeiture

11. The Defendant agrees to forfeit to the United States all of his right, title, and interest in any and all money, property, or assets of any kind, derived from or acquired as a result of, or used to facilitate the commission of, the Defendant's illegal activities, including all of the right, title and interest of HOWARD RICE, the Defendant, in a 2000 Mercedes-Benz bearing Maryland registration 418BLN.

12. The Defendant agrees to assist fully the United States in the forfeiture of the foregoing assets. The Defendant agrees to take all steps necessary to pass to the United States clear title to these assets, including but not limited to executing any and all documents necessary to

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Ex. 3

SHL/JMW
2004R00577IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

v.
HOWARD RICE,
a/k/a "Howie,"
a/k/a "H,"RAESHIO RICE,
a/k/a "Whip,"
a/k/a "Goodie,"ANTHONY LEONARD,
a/k/a "Ant,"
a/k/a "Cuzzo,"STEVEN CAMPBELL,
ERIC CLASH,
a/k/a "Whiteboy,"ERIC HALL,
a/k/a "E,"GEORGE BUTLER,
a/k/a "Dolce,"MICHAEL FELDER,
ROBERT LEE BAKER,
a/k/a "Pops,"
CHET PAJARDO,

Defendants

* CRIMINAL NO. WDO-04-0323

* (Racketeering, 18 U.S.C. § 1962(c);
 * Racketeering Conspiracy, 18 U.S.C. § 1962(d); Conspiracy to Distribute a
 * Controlled Substance, 21 U.S.C. § 846;
 * Murder in Aid of Racketeering, 18 U.S.C. § 1959; Conspiracy to Possess a
 * Firearm in Furtherance of a Drug-Trafficking Crime, 18 U.S.C. § 924(o);
 * Possession of a Firearm in Furtherance
 * of a Drug-Trafficking Crime, 18 U.S.C. § 924(c); Possession of a Firearm in
 * Furtherance of a Drug-Trafficking
 * Crime Resulting in Death, 18 U.S.C. § 924(j); Possession of Firearms by a
 * Convicted Felon, 18 U.S.C. § 922(g);
 * Possession with Intent to Distribute a
 * Controlled Substance, 21 U.S.C. § 841;
 * Aiding and Abetting, 18 U.S.C. § 2;
 * Forfeiture, 21 U.S.C. §§ 841(a)(1), 846,
 and 853; 18 U.S.C. § 982)

SECOND SUPERSEDING INDICTMENTCOUNT ONERacketeering

The Grand Jury for the District of Maryland charges:

1. At certain times relevant to this Superseding Indictment, HOWARD RICE, a/k/a "Howie," a/k/a "H," RAESHIO RICE, a/k/a "Whip," a/k/a "Goodie," ANTHONY

LEONARD, a/k/a "Ant," a/k/a "Cuzzo," STEVEN CAMPBELL, ERIC CLASH, a/k/a "Whiteboy," and ERIC HALL, a/k/a "E," along with others known and unknown to the Grand Jury, were members of the RICE ORGANIZATION, a criminal organization which operated in Baltimore and elsewhere, whose members engaged in narcotics distribution and committed acts of violence, including conspiracy to murder and murder.

2. At all times relevant to this Superseding Indictment, HOWARD RICE, a/k/a "Howie," a/k/a "H," and RAESHIO RICE, a/k/a "Whip," a/k/a "Goodie," were the leaders of the RICE ORGANIZATION and were responsible for overseeing the day-to-day operation of the enterprise's narcotics-trafficking activities.

3. At certain times relevant to this Superseding Indictment, ANTHONY LEONARD, a/k/a "Ant," a/k/a "Cuzzo," and STEVEN CAMPBELL were the primary suppliers of cocaine for the RICE ORGANIZATION.

4. At certain times relevant to this Superseding Indictment, ERIC CLASH, a/k/a "Whiteboy," was a lieutenant in the RICE ORGANIZATION who helped manage the day-to-day operation of the enterprise's narcotics-trafficking activities.

5. At certain times relevant to this Superseding Indictment, ERIC HALL, a/k/a "E," was a "hitman" for the RICE ORGANIZATION who committed and attempted to commit multiple contract murders in furtherance of the enterprise.

6. At certain times relevant to this Superseding Indictment, HOWARD RICE, a/k/a "Howie," a/k/a "H," and ERIC CLASH, a/k/a "Whiteboy," were owners of The Red Door Lounge, a bar located at 1000 North Payson Street, Baltimore, Maryland.

Ex. 4

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 NORTHERN DIVISION

4 UNITED STATES OF AMERICA)
5 v.) Criminal Docket No. WDQ-06-0491
6 DARNELL ANTHONY YOUNG,)
7 Defendant)
8 Baltimore, Maryland
9 January 26, 2011
10 10:09 AM to 11:45 AM

11 THE ABOVE-ENTITLED MATTER CAME ON FOR
12 SENTENCING
13 BEFORE THE HONORABLE WILLIAM D. QUARLES, JR.

14 APPEARANCES

15 On behalf of the Government:
16 Tonya Kelly Kowitz, Assistant U.S. Attorney

17 On behalf of the Defendant:
18 Gary Allen Ticknor, Esquire

19 Also present:
20 Detective William Nickols

21
22 Reported by:
23 Martin J. Giordano, RMR, CRR, FOOR
U.S. Courthouse, Room 5515
101 West Lombard Street
Baltimore, Maryland 21201
410-962-4504

1 PROCEEDINGS OF JANUARY 26, 2011

2 THE CLERK: Please rise. The United States District
3 Court for the District of Maryland is now in session. The
4 Honorable William D. Quarles, Jr., presiding.

5 MS. KOWITZ: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MS. KOWITZ: Calling the case of United States
8 versus Darnell Anthony Young, Criminal Number WDQ-06-0491.
9 Tonya Kelly Kowitz on behalf of the United States. Also
10 seated at counsel table is Detective William Nickols with the
11 Baltimore City Police Department. And we're here for a
12 resentencing.

13 THE COURT: Ms. Kowitz, Detective Nickols.

14 MR. TICKNOR: Good morning, Your Honor. Gary
15 Ticknor on behalf of the Defendant, who is seated to my left
16 at the trial table. Mr. Young and I are ready to go forward
17 with sentencing this morning, Your Honor.

18 THE COURT: Thank you. Ms. Kowitz, I understand you
19 have evidence?

20 MS. KOWITZ: Pardon?

21 THE COURT: You have evidence?

22 MS. KOWITZ: I do, Your Honor. I plan to call the
23 one witness who I just need about three minutes to get him
24 from -- from a place.

25 THE COURT: Okay.

1 MS. KOWITZ: Would this be the time?

2 THE COURT: Yes.

3 MR. TICKNOR: Well, while they're waiting for that
4 three minutes, I can put on the record, Your Honor, that we're
5 still working off of the presentence report that was done for
6 the original sentencing, and I have two --

7 THE COURT: There was a December revision.

8 MR. TICKNOR: Okay.

9 THE COURT: Which perhaps you should review. I have
10 a copy, if you --

11 MR. TICKNOR: Yes, I would love to see that
12 revision, Your Honor, because I don't have that.
(Document tendered to Mr. Ticknor.)

13 THE COURT: Mr. Ticknor, do you need a moment to
14 review the December revision with Mr. Young?

15 MR. TICKNOR: Yes, Your Honor. I'm sorry. I was
16 reviewing it, but -- I looked it over.
(Counsel conferring with the Defendant.)

17 THE COURT: Ms. Kowitz, I think your witness is
18 here.

19 MS. KOWITZ: Yes, Your Honor. The Government
20 calls --

21 THE COURT: We'll wait just a moment until
22 Mr. Ticknor is finished reviewing the December revision.

23 MR. TICKNOR: Yes, Your Honor. We have reviewed

1 this, and we do have some revisions.

2 THE COURT: Okay. If you will note them until we
3 conclude the evidence if you would.

4 MR. TICKNOR: Right.

5 THE COURT: Please call your witness.

6 MS. KOWITZ: Yes, Your Honor. The Government calls
7 Eric Clash.

8 THE CLERK: Raise your right hand.

9 ERIC ANTHONY CLASH

10 WAS THEN DULY SWORN TO TELL THE TRUTH

11 THE CLERK: Please be seated. State your name for
12 the record, speak directly into that microphone, and spell
13 your name, please.

14 THE WITNESS: Eric Anthony Clash.

15 MS. KOWITZ: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 Q. (BY MS. KOWITZ) Good morning, Mr. Clash.

18 A. Good morning.

19 Q. Do you live in the state of Maryland?

20 A. Yes.

21 Q. Without telling me where, are you currently working?

22 A. Yes.

23 Q. And, generally speaking, what are you doing?

24 A. Self-employed, running a business.

25 Q. Are you working regularly?

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Direct Examination of Eric Anthony Clash

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1 A. Yes.
2 Q. As in every day?
3 A. Yes.
4 Q. Are you on supervised release?
5 A. Yes.
6 Q. And what does that mean?
7 A. I have probation for five years, and I basically have to follow the rules of my probation.
8 Q. And you said for five years. Was that following a federal felony conviction in this Court?
9 A. Yes.
10 Q. And did you recently return home from having been incarcerated for that same conviction after going to a halfway house?
11 A. Yes.
12 Q. And when was that?
13 A. September.
14 Q. Of 2010?
15 A. Yes. Well, I returned home in March, but left the halfway house in September.
16 Q. Okay. Both of the year 2010?
17 A. Yes.
18 Q. Okay. You mentioned probation. Do you have a probation officer?
19 A. Yes.

1 Q. And is that person's name Colleen Stone?
2 A. Yes.
3 Q. How often do you have to meet with her?
4 A. Once a month.
5 Q. And do you also have to do random drug testing?
6 A. Yes.
7 Q. How often is that?
8 A. Once a week.
9 Q. And, to your knowledge, have all of your drug checks been clean?
10 A. Yes.
11 Q. And, to your knowledge, are you in compliance with all of your conditions of supervised release?
12 A. Yes.
13 Q. How old are you now?
14 A. Thirty-two.
15 Q. And, at some point in your life, did you start selling drugs?
16 A. Yes.
17 Q. How old were you?
18 A. Fifteen.
19 Q. Was that approximately 1994?
20 A. Yes.
21 Q. Did you graduate from high school?
22 A. Yes.

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1 Q. Where did you graduate from?
2 A. Baltimore City College.
3 Q. Okay. Briefly tell the Court, if you would, how it is that you got started involved in dealing drugs when you were 15.
4 A. Just being in my environment. Grew up in the Park Heights community and peer pressure, wanted what was around me, to be part of what was around me growing up.
5 Q. We talked earlier about a federal conviction. Were you arrested in February of 2005?
6 A. Yes.
7 Q. Did you sell drugs consistently from 1994 until 2005 when you were arrested?
8 A. Yes.
9 Q. Okay. Do you know an individual by the name of Travis Golder?
10 A. Yes.
11 Q. Does he have a nickname?
12 A. No.
13 Q. Okay. How do you know him?
14 A. We grew up together in the same community.
15 Q. What is your relationship, or what was your relationship with Mr. Golder?
16 A. We were pretty much friends.
17 Q. Did you have any type of interactions with him having to

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1 do with drugs?
2 A. Yeah. The whole time that we knew each other, pretty much.
3 Q. Starting in 1994?
4 A. Correct.
5 Q. Okay. All the way up until you were arrested?
6 A. To 2003.
7 Q. Okay. Until the year 2003?
8 A. Yes.
9 Q. Okay. And, before you were arrested in the federal case that we discussed, did you smoke marijuana?
10 A. Yes.
11 Q. How often?
12 A. Shew! Every day.
13 Q. Okay. Did there come a time after 1994 in selling drugs that you met Howard -- the Rice brothers?
14 A. Yes.
15 Q. What year was that?
16 A. Around '97.
17 Q. And describe, if you would, briefly for the Court who the Rice brothers are and how you knew them.
18 A. Well, I met them at '97, and they were -- we all sold drugs together, and pretty much partied and had businesses together.
19 Q. From approximately 1997 until when?

EX. 5

1 A. 2002.
 2 Q. Okay. And, ultimately, the felony conviction you had,
 3 did that have to do with your drug dealings and being in a
 4 conspiracy with the Rice brothers?
 5 A. Correct.
 6 Q. Did the Rice brothers engage in violence, to your
 7 knowledge?
 8 A. Yes.
 9 Q. And how do you know that?
 10 A. I was part of it. I mean, I was in -- in agreement on
 11 different occasions with violence.
 12 Q. Okay. And did you ever yourself participate in the
 13 violence, or was it more agreeing beforehand?
 14 A. More agreeing.
 15 Q. Okay. Did there come a time when you got arrested in
 16 Baltimore City for a drug offense?
 17 A. Yes.
 18 Q. Was that 1998?
 19 A. Correct.
 20 Q. Did you ever spend any time in jail at that time?
 21 A. No.
 22 Q. Okay. Okay. So, fast-forwarding to approximately 1998,
 23 tell the Court a little bit about your drug dealing
 24 activities, your suppliers, what you're doing with it. Just
 25 bring us to 1998.

1 A. 1998, still selling drugs, cocaine. At that time, I was
 2 getting cocaine from the Rice -- Howard Rice.
 3 Q. Okay. And what quantities were you selling it in?
 4 A. Four and a half, nine ounces.
 5 Q. Nothing more than that at that time?
 6 A. Nothing more than that.
 7 Q. Okay. And did you do some of this selling at a car wash
 8 in Baltimore City?
 9 A. Yes.
 10 Q. Where was that located?
 11 A. Quantico in Park Heights.
 12 Q. Okay. Tell the Court a little bit about the car wash.
 13 What is it? What did you do there?
 14 A. It was in the community -- Park Heights community that I
 15 grew up in, and we just pretty much hung out, got car washes.
 16 It was just like a meeting spot.
 17 Q. But you would also sell drugs there?
 18 A. Correct.
 19 Q. Okay. Did there come a time towards the end of '97 or
 20 early 1998 where you met a person by the name of Darnell
 21 Young?
 22 A. Yes.
 23 Q. Where did you meet him?
 24 A. At the car wash.
 25 Q. Did you know him by any other name?

1 A. Nelly.
 2 Q. How is it that you met him? Did someone introduce you,
 3 or how did it happen?
 4 A. Just being at the car wash. We just kind of talked --
 5 started talking and conversating from there.
 6 Q. To your knowledge, at that time, did Mr. Young have an
 7 involvement with Howard Rice?
 8 A. No.
 9 Q. Okay. Did there come a time in that year that you
 10 started selling cocaine to Mr. Young?
 11 A. Yes.
 12 Q. And when was that?
 13 A. Probably around spring of '98.
 14 Q. And what quantities did you sell to Mr. Young when you
 15 first started selling him cocaine?
 16 A. Like four and a half ounces.
 17 Q. Would you typically sell more than four and a half ounces
 18 to someone that you just met?
 19 A. Yes.
 20 Q. If they paid you upfront?
 21 A. Correct.
 22 Q. Okay. Did it ever increase in 1998 from selling
 23 Mr. Young four and a half ounces to more?
 24 A. More towards the latter part of 1998, like started being
 25 like nine ounces.

1 Q. Okay. And is that the most that you sold him during the
 2 1998 time frame?
 3 A. Yes.
 4 Q. Okay. When you would sell him the nine ounces, would he
 5 pay you the full amount, or would you -- or something
 6 different?
 7 A. Not always did he have all the money, so I would -- if
 8 nine ounces was \$6,000 at that time, 6,500 at that time, he
 9 might have 4,000 or 5,000, and he would just owe me the rest.
 10 Q. Okay. And so what would happen? How would you get the
 11 rest?
 12 A. You know, whenever he called and said he had the rest.
 13 Q. And you'd go pick up the money?
 14 A. Correct.
 15 Q. Okay. And I think you anticipated, but how much did nine
 16 ounces of cocaine cost, or how much did you sell it for in
 17 approximately '98?
 18 A. Maybe like six -- \$6,500.
 19 Q. Did you know from conversations with Mr. Young what he
 20 was doing with the cocaine after he bought it from you?
 21 A. I mean, as far as I knew, he was just street-level guys,
 22 selling small -- small quantities, you know, of weight is what
 23 we called it.
 24 Q. Okay. Is that like colloquially what you would call what
 25 you were doing, selling weight?

1 A. Yes.
 2 Q. Okay. Did there come a time in 1998 when your cocaine
 3 supply dried up?
 4 A. Yes.
 5 Q. When was that?
 6 A. Like around October of '98.
 7 Q. And did that cause you to stop selling cocaine regularly
 8 to Mr. Young?
 9 A. Yes.
 10 Q. Okay. So what would you estimate, the quantity of
 11 cocaine that you sold to Mr. Young from the spring of 1998 to
 12 the fall of 1998?
 13 A. About three keys, maybe.
 14 Q. How often would you meet with Mr. Young during this time
 15 frame?
 16 A. Maybe twice a month.
 17 Q. Okay. So, just so we're clear, from the spring of '98 to
 18 the fall of '98, you meet Mr. Young about twice a month, and
 19 the quantity ranges from four and a half to nine ounces?
 20 A. Yes.
 21 Q. Okay. Did the lack of supply of cocaine go through most
 22 of 1999, the next year?
 23 A. Yes.
 24 Q. Okay. So did you sell cocaine to Darnell Young in 1999?
 25 A. No.

1 Q. But were you still selling cocaine to other people in
 2 1999?
 3 A. Yes.
 4 Q. Okay. And were you still selling what we just called
 5 weight to other people?
 6 A. Yes.
 7 Q. Okay. Moving forward to the end of 1999, did you
 8 identify a new source for cocaine?
 9 A. Yes.
 10 Q. And who was that?
 11 A. My cousin, Anthony Leonard.
 12 Q. Okay. And where was Anthony Leonard getting cocaine when
 13 you first met with Mr. Leonard?
 14 A. Los Angeles.
 15 Q. When you would get it in the prior years from
 16 Howard Rice, did that come from outside of Baltimore, or did
 17 you know?
 18 A. I didn't know.
 19 Q. Okay. It was directly you and Howard Rice?
 20 A. Yes.
 21 Q. Okay. And you say that Anthony Leonard was getting it
 22 from L.A. How do you know that?
 23 A. We were cousins, so it was kind of firsthand /
 24 communication.
 25 Q. And did you actually meet with folks from L.A.?

1 A. Yes.
 2 Q. Were they American?
 3 A. No.
 4 Q. Okay. What nationality or ethnicity were they?
 5 A. Spanish.
 6 Q. Okay.
 7 A. Mexican.
 8 Q. Now, when you identified this L.A. source for cocaine,
 9 did the source have cocaine to sell in larger quantities than
 10 what you were buying from Howard Rice?
 11 A. Yes.
 12 Q. A lot larger quantities?
 13 A. A lot larger.
 14 Q. Okay. And did that mean that you had larger quantities
 15 of cocaine to sell to people around here?
 16 A. Yes.
 17 Q. Okay. And then did that prompt you to start selling
 18 drugs to Mr. Young again?
 19 A. Later on, yes.
 20 Q. Okay. When is the next time that you remember selling
 21 drugs to Mr. Young? What year?
 22 A. 2000.
 23 Q. Okay. What time frame of the year was it that you
 24 remember?
 25 A. Around spring 2000.

1 Q. Okay. Now, just to be clear, from the fall of '98 into
 2 the spring of 2000, did you still see Mr. Young?
 3 A. Yes.
 4 Q. Where would you see him?
 5 A. The car wash.
 6 Q. Okay. So you were still in contact with him?
 7 A. Yes.
 8 Q. Okay. And did the quantities that you had been selling
 9 to Mr. Young in '98 change in the spring or summer of 2000?
 10 A. Yes.
 11 Q. Okay. And so tell the Court, if you would, what
 12 quantities of cocaine you sold to Mr. Young in the 2000 time
 13 frame.
 14 A. Now he's probably buying -- he's buying a half a key, and
 15 I'm giving him -- I'm giving him a half, which equals to a
 16 whole key.
 17 Q. Okay. And, when you say, "key," just to be clear, that's
 18 a kilogram of cocaine?
 19 A. Yes.
 20 Q. Okay. What does a kilogram of cocaine cost at
 21 approximately this time?
 22 A. Twenty-four, twenty-five.
 23 Q. So does that mean that Mr. Young would have to give you
 24 approximately 12,000, you'd give him the whole key, the
 25 kilogram, and he would bring back the rest?

Ex. 5

1 A. Correct.
 2 Q. Okay. Did you ever have any problems with Mr. Young
 3 getting you the money back?
 4 A. No.
 5 Q. Okay. Do you know at this time through conversations
 6 with Mr. Young of what he's doing with the kilogram quantities
 7 of cocaine that you're providing to him?
 8 A. Pretty much selling it as weight.
 9 Q. Okay. If you could give the Court an example, where
 10 would you meet with Mr. Young to give him this quantity of
 11 cocaine?
 12 A. The car wash, just different local spots in the area,
 13 maybe like the Reisterstown Road Plaza, places like that.
 14 Q. Okay. Did there come a time in 2000 that your supply
 15 dries up and you again stop selling cocaine to Mr. Young?
 16 A. Yes.
 17 Q. When was that?
 18 A. The end of 2000, fall, around October, in that time
 19 again.
 20 Q. Okay. Did you continuously sell cocaine to Mr. Young
 21 from the timeframe you testified to, the spring of 2000, to
 22 the fall of 2000?
 23 A. Can you repeat that question?
 24 Q. Yes. I'm sorry. Did you sell cocaine to Mr. Young
 25 consistently from the spring of 2000 to the fall of 2000?

1 A. Yes.
 2 Q. Okay. And how often would you estimate that you met with
 3 him per month during that time frame?
 4 A. Probably twice, three times a month.
 5 Q. Okay. And, if you had to estimate about approximately
 6 how many kilograms of cocaine you sold to Mr. Young between
 7 the spring of 2000 and the fall of 2000, what would your
 8 estimate be?
 9 A. Between ten to fifteen kilos.
 10 Q. Could it have been more?
 11 A. Yes.
 12 Q. Do you think it's possible that it was less?
 13 A. Not less.
 14 Q. Okay. So, you testified that your supply of drugs dried
 15 up again in the fall of 2000. What did you do?
 16 A. In the fall of 2000, I opened a bar.
 17 Q. What was it called?
 18 A. The Red Door Lounge.
 19 Q. And did you have a partner?
 20 A. Yes.
 21 Q. Who was that?
 22 A. Howard. Howard Rice.
 23 Q. And describe just briefly for the Court: What kind of
 24 bar or lounge was it?
 25 A. It was basically a club, in so many words. It was a

1 club.
 2 Q. Was it open at night?
 3 A. Yes, seven days a week.
 4 Q. And you sold alcohol?
 5 A. Sold alcohol, right.
 6 Q. And played music?
 7 A. And played music.
 8 Q. Okay. Did the club have a DJ?
 9 A. Yes.
 10 Q. And who was that?
 11 A. Nelly.
 12 Q. Okay. That's the Defendant who is here?
 13 A. Yes.
 14 Q. Okay. Were you responsible for meeting with Mr. Young as
 15 the DJ of the club?
 16 A. Not really responsible. I mean, it was -- the bar was
 17 like open house, so, you know, he was -- he was with us, so he
 18 could come at any time.
 19 Q. Did the club -- when it first opened, was it a popular
 20 place to hang out?
 21 A. Yes.
 22 Q. And the bar opened in November of 2000. How long was it
 23 open until?
 24 A. 2002.
 25 Q. And was Mr. Young the DJ that whole time?

1 A. Yes.
 2 Q. How would you describe your contact with him during that
 3 time frame? How regular was it?
 4 A. As far as him being DJ in the bar?
 5 Q. Uh-huh.
 6 A. Almost every day.
 7 Q. Okay. Now, what's your relationship with Travis Golder
 8 at the time?
 9 A. Still friends. You know, still in communication, still
 10 coming down to the bar.
 11 Q. How often would you see Travis Golder?
 12 A. Probably about every day.
 13 Q. Okay. Did you see or observe anything about Mr. Young
 14 and Mr. Golder's relationship? What was it like?
 15 A. I mean, they pretty much was hanging together every day.
 16 Q. Okay. Could you describe, from what you saw, Mr. Young's
 17 sort of life-style during that time frame, you know,
 18 descriptions of any cars that you knew he drove, anything
 19 like that?
 20 A. I mean, he -- I mean, he had, I think, at the time then,
 21 it might have been like a black Mercedes station wagon. I
 22 mean, but just your typical guy. I mean, always dressed nice,
 23 so --
 24 Q. Do you know through any conversations that you had with
 25 Travis Golder during that time frame whether Travis Golder and

1 Darnell Young are involved in cocaine deals together?
 2 A. Yes. With Travis, yes. I had conversations with Travis.
 3 Q. Okay. This is during the time of the Red Door Lounge?
 4 A. Yes.
 5 Q. Okay. But did you yourself sell any cocaine to
 6 Darnell Young in 2001?
 7 A. No.
 8 Q. Okay. Are you selling drugs at all in 2001?
 9 A. Not really, no.
 10 Q. Did you get involved with heroin at all during that
 11 timeframe?
 12 A. Just a little bit of heroin, yeah.
 13 Q. And you never sold heroin to Mr. Young?
 14 A. No.
 15 Q. Okay. All right. Turning your attention to New Year's
 16 Eve of 2001, turning into 2002, did your source of supply from
 17 L.A. have more cocaine for you?
 18 A. Yes.
 19 Q. Had you dealt with this source in the 2001 timeframe?
 20 A. No.
 21 Q. Okay. So this was sort of --
 22 A. First time.
 23 Q. Okay. And do you recall whether this was a large
 24 shipment of cocaine?
 25 A. Yes, it was a large shipment.

1 Q. About how much?
 2 A. About 50 keys.
 3 Q. Okay. And were you the person that met with the L.A.
 4 source, got the keys, and distributed in Baltimore?
 5 A. Yes.
 6 Q. Okay. Did you sell any of that cocaine to Darnell Young?
 7 A. No.
 8 Q. Okay. Now, now that we're moved forward to '01, turning
 9 into '02, what's your relationship with the Rice brothers?
 10 A. You know, still business partners -- well, me and Howard
 11 are still business partners and friends.
 12 Q. And, now that you have your source in L.A., between you
 13 and the Rice brothers, who is supplying cocaine to who?
 14 A. I'm supplying to the Rice brothers.
 15 Q. In February of 2002, were you stabbed at a nightclub?
 16 A. Yes.
 17 Q. Okay. How did that come about?
 18 A. Went to a birthday party at Hammerjack's --
 19 Q. Whose birthday party was it?
 20 A. Kevin Liles' birthday party.
 21 Q. Okay.
 22 A. And got into an altercation with some guys, and I got --
 23 ended up getting stabbed.
 24 Q. Who were you with? Were you with the Rice brothers?
 25 A. Yes.

1 Q. Okay. And did you have to go to the hospital?
 2 A. Yes.
 3 Q. Okay. Did you at some point find out who it was that
 4 stabbed you?
 5 A. Yes.
 6 Q. And who is that?
 7 A. A guy by the name of -- well, at the time, we knew him as
 8 Bo, but come to find out --
 9 MR. TICKNOR: I'm sorry. I couldn't hear that.
 10 THE WITNESS: At a later time we found out -- I
 11 mean, at the time, we found out his name was Bo, but later on,
 12 we found out his real name was Willie Mitchell.
 13 Q. (BY MS. ROWITZ) Willie Mitchell's real name is Bo?
 14 A. No.
 15 Q. I'm sorry.
 16 A. Bo's real name is Willie Mitchell.
 17 Q. Strike that. Bo's real name is Willie Mitchell?
 18 A. Yes.
 19 Q. Okay. And, after you determined that it was Mr. Mitchell
 20 who was responsible for the stabbing, was there a plan for
 21 retaliation against Mr. Mitchell?
 22 A. Yes.
 23 Q. And were you involved in conversations about that?
 24 A. Yes.
 25 Q. And what was the plan for the retaliation against

1 Willie Mitchell?
 2 A. To get him killed.
 3 Q. And did that ever happen?
 4 A. No.
 5 Q. Okay. Were you asked to testify at the trial of
 6 Willie Mitchell in this courthouse?
 7 A. Yes.
 8 Q. And did you do so?
 9 A. Yes.
 10 Q. Prior to testifying against Willie Mitchell, did you
 11 learn about any reputation of violence that Mr. Mitchell had?
 12 A. Yes.
 13 Q. And what was that?
 14 A. That, you know, he was -- he was a violent guy.
 15 Q. Involved in what level of violence?
 16 A. Involved in murders.
 17 Q. Okay. And, when you testified in Mr. Mitchell's trial,
 18 was there a jury in the box?
 19 A. Yes.
 20 Q. Okay. And do you know if Mr. Mitchell was ultimately
 21 convicted?
 22 A. Yes.
 23 Q. He was?
 24 A. Yes.
 25 Q. Okay. So, turning your attention now to the July

1 timeframe of 2002, are you recovered from the stabbing?
 2 A. Yes.
 3 Q. Okay. And what, if anything, changes in your life in the
 4 July timeframe of 2002?
 5 A. Any changes in my life?
 6 Q. Uh-huh.
 7 A. I really want to stop selling drugs, so I begin to tell
 8 Travis Golder at the time that I'm no longer going to be part
 9 of selling drugs, and I hooked him up with my cousin, Anthony.
 10 Q. And, now, when you say that you don't want to sell drugs
 11 anymore, does that mean you're going to be completely out of
 12 it, or somebody else is going to do it for you, and you're
 13 still going to financially benefit?
 14 A. I was completely out of it.
 15 Q. Okay. And did that actually happen?
 16 A. No.
 17 Q. Okay. What happened in the fall of 2002?
 18 A. We got 200 keys.
 19 Q. From where?
 20 A. L.A.
 21 Q. Same source?
 22 A. Yep.
 23 Q. Okay. Are you aware whether or not, between July of 2002
 24 and the 200 kilogram shipment from L.A., whether, in fact,
 25 Mr. Golder worked with Mr. Leonard?

1 A. Yes.
 2 Q. Okay. But you weren't involved in that?
 3 A. No.
 4 Q. Okay. So tell the Court, if you could, about the fall of
 5 2002, how you got the information about the 200-kilogram
 6 shipment.
 7 A. I got a call from Anthony and -- Anthony Leonard. I met
 8 with him, pretty much said that we had 200 keys, and, you
 9 know, "You could have them to sell."
 10 Q. Okay. Where are they? I mean, where are 200 keys?
 11 A. At the time, they were -- at the time, they were at a guy
 12 by the name of Steven Campbell's house.
 13 Q. And did you take initially the whole 200, or did you take
 14 part of it?
 15 A. I took part of it.
 16 Q. And how much was that?
 17 A. I took 50 at first.
 18 Q. And do you remember what kind of container it was in?
 19 A. Like one of those blue, like Rubber Maid containers.
 20 Q. Okay. And what did you do with those 50 kilograms?
 21 A. I gave them to Travis and told Travis to give them to --
 22 to give Nelly 20 of them, and Travis dealt with the rest of
 23 them.
 24 Q. Okay. And do you know whether Travis, Mr. Golder, gave
 25 20 kilograms from that 50 to Mr. Young?

1 A. Yes.
 2 Q. Okay. And how do you know that?
 3 A. Well, he -- one, he told me, and, two, we met up with him
 4 later on -- latter on in this -- in 2003 to pick up money from
 5 the 20 keys.
 6 Q. Okay. Where was it that you picked money up from?
 7 A. At his house in -- Reisterstown Road.
 8 Q. Okay. And did it take Mr. Young a while to sell that 20
 9 kilos?
 10 A. Yes.
 11 Q. How long did it take him, if you recall?
 12 A. Until February of '03.
 13 Q. Okay. So, if you could, tell the Court, out of 200
 14 kilos, whether any of that was sold to the Rice brothers.
 15 A. No.
 16 Q. And why was that?
 17 A. Because, at the time, I felt like that the Rice brothers
 18 were bringing on a lot of heat with fancy cars and things like
 19 that.
 20 Q. Was there anything about how the Rice brothers were
 21 living that caused you to want to cut them out?
 22 A. Yes.
 23 Q. And how was that?
 24 A. At the time, Raeshio Rice was driving around with a
 25 Bentley, and that was more than enough reason for me not to

1 want him to be part of, or want them to be part of it. I
 2 knew, if I had to deal with one, I had to deal with both.
 3 Q. And what were you afraid of?
 4 A. Being here.
 5 Q. What do you mean by that?
 6 A. Prison.
 7 Q. Police?
 8 A. Yes, correct.
 9 Q. Okay. And did you have any conversations with Mr. Young
 10 about what he should do if the Rice brothers were to ask him
 11 where he got the large quantities of cocaine?
 12 A. Yes. I told him -- at the time, I told him to -- I told
 13 him to say that he was getting it from a friend of -- like I
 14 guess a friend of his by the name of Clive or Clyde.
 15 Q. Instead of from you?
 16 A. Right, to say instead of me.
 17 Q. Okay. And, to you, at this point, who do you understand
 18 Clive to be?
 19 A. Somebody he was getting drugs from.
 20 Q. Who was getting drugs from?
 21 A. Darnell.
 22 Q. And how do you know at this time that Darnell Young is
 23 getting drugs from somebody named Clive?
 24 A. Well, previously, you know, in the year, we had
 25 conversations, you know, me and Worm, or me, him, and Worm.

1 Q. About that?
 2 A. Yes, correct.
 3 Q. Okay. And, just to make sure it's clear, when you picked
 4 money up for the payment for the 20 kilograms from Mr. Young,
 5 whose house was that at?
 6 A. Mr. Young's house.
 7 Q. Okay. And that's the one you described as being on
 8 Reisterstown Road?
 9 A. Correct.
 10 Q. Okay. Was anybody else present when you had this
 11 conversation with Mr. Young about what to say about the kilos,
 12 if anyone asked, if the Rice brothers asked?
 13 A. Yeah. Travis. Travis Golder.
 14 Q. Okay. And did Mr. Young have any reaction to that about
 15 whether that would be believable or not?
 16 A. No, he didn't have a reaction.
 17 Q. Okay. Do you know if Mr. Young continued DJ'ing after
 18 the Red Door shut down?
 19 A. Yes.
 20 Q. Okay. And what kind of places that you know of?
 21 A. Parties, clubs. You know, clubs.
 22 Q. Now, describe if you would for the Court: Outside of
 23 drug dealing activities with the Rice brothers, what other
 24 kinds of stuff would you all do together? Did you have any
 25 other sort of social interactions?

1 A. We gave parties, cookouts, traveled together.
 2 Q. And, when you described these parties and cookouts, did a
 3 lot of people come?
 4 A. Yes.
 5 Q. And did you charge them money to come?
 6 A. Yes.
 7 Q. Okay. If you had to guess, like what was the biggest --
 8 like the largest number of people who came to one of your
 9 parties?
 10 A. 2,500, 3,000 people maybe.
 11 Q. Coming to a party?
 12 A. Yes.
 13 Q. Okay. And, I mean, why would they come to the party?
 14 A. I guess just wanting to have a nice time. You know, go
 15 out, have a nice party, be at a nice party.
 16 Q. Okay. And was Mr. Young ever present at any of these
 17 parties?
 18 A. Yes. He was the DJ at most of them.
 19 Q. Okay. I'm going to show you --
 20 MS. KOWITZ: May I approach, Your Honor?
 21 THE COURT: Yes.
 22 Q. (BY MS. KOWITZ) I'm going to show you what's been marked
 23 as Government's Exhibits 3, 4, and 5. I'm sorry they're out
 24 of number. Turning your attention first to Grand Jury
 25 Exhibit Number 3, what is that?

1 A. This is a part -- this is a picture of the mansion party.
 2 Q. Okay. What was the mansion party?
 3 A. It was another party. We just threw a theme on it
 4 calling it a mansion party, because it was somewhat -- it was
 5 different, and it was like -- somewhat like a big house, and
 6 that was, I think, in August '02.
 7 Q. The year 2002?
 8 A. August '01.
 9 Q. Oh, 2001. Okay. Are you in that picture?
 10 A. Yes.
 11 Q. Just so the Court, when the Court sees it, what are you
 12 wearing in the picture?
 13 A. Wearing a colorful shirt and a black hat.
 14 Q. And you have pink pants on?
 15 A. And pink pants, yeah.
 16 Q. Okay. If you could identify Mr. Young in that picture.
 17 A. Yes.
 18 Q. Kind of describe, if you could, for the Court where he is
 19 in that picture.
 20 A. He's wearing a colorful shirt, too.
 21 Q. Okay. Are any other persons that you testified about
 22 here today in that picture? For instance, Mr. Golder?
 23 A. Yeah. Mr. Golder is there, Howard Rice is there, and
 24 Anthony Leonard.
 25 Q. Are all in that same picture?

1 A. Yes.
 2 Q. Okay. I'm showing you Government's Exhibit Number 4. Do
 3 you recognize the people in that photograph?
 4 A. Yes.
 5 Q. Where was that picture taken?
 6 A. Same party, mansion party.
 7 Q. And who is in that picture?
 8 A. Worm and Nelly.
 9 Q. Just comparing Government's Exhibit 3 to 4, can you tell
 10 that Mr. Young is wearing the same shirt in both of those?
 11 A. Yes.
 12 Q. Okay. And Mr. Golder's dressed the same?
 13 A. Yes.
 14 Q. Now I'm going to show you Government's Exhibit Number 5.
 15 Do you recognize that photograph?
 16 A. Yes.
 17 Q. And who is in that photograph?
 18 A. Worm and Nelly.
 19 Q. Okay. Do you know where that photograph was taken?
 20 A. Yeah. Howard Rice's birthday party.
 21 Q. Howard Rice's birthday party?
 22 A. Yes.
 23 Q. Were you present?
 24 A. Yes.
 25 Q. And that's Mr. Golder and Mr. Young in that picture

1 together?
 2 A. Yes.
 3 MS. KOWITZ: May I pass these up to the Court, Your
 4 Honor?
 5 THE COURT: Yes, thank you. They are admitted.
 6 (Exhibit tendered to the Court.)
 7 Q. (BY MS. KOWITZ) Just generally, how much would you charge
 8 a person to come to one of these parties?
 9 A. 20 -- \$20. 20, \$30.
 10 Q. Were they lucrative to those of you who were throwing
 11 them?
 12 A. Yes.
 13 Q. Okay. So now sort of fast-forwarding to 2004, did anyone
 14 that you were involved with get arrested?
 15 A. Yes. The Rice brothers and Travis Golder.
 16 Q. And you were not arrested as part of that Indictment?
 17 A. Correct.
 18 Q. Okay. Did there come a time prior to your arrest that
 19 Travis Golder came home?
 20 A. Yes.
 21 Q. Okay. And then did you eventually get arrested?
 22 A. Yes.
 23 Q. Okay. Was that in February of '05?
 24 A. Correct.
 25 Q. Okay. And do you recall who was involved -- in your

1 Indictment against you, who were you involved -- who was
 2 alleged to have been in the conspiracy that you were
 3 ultimately -- that you ultimately pled guilty to? What was
 4 the Indictment about?
 5 A. Selling drugs and being part of -- and violence, and with
 6 the Rice brothers, Anthony Leonard.
 7 Q. And Travis Golder?
 8 A. And Travis Golder, yeah.
 9 Q. Okay. And, after you were arrested, were you approached
 10 by law enforcement asking whether you would be willing to
 11 provide substantial assistance to the Government?
 12 A. Yes.
 13 Q. And what was your original response?
 14 A. "No."
 15 Q. Did you eventually change your mind?
 16 A. Yes.
 17 Q. Okay. And then, after doing so, did you go through a
 18 series of sit-down interviews with law enforcement and
 19 prosecutors?
 20 A. Yes.
 21 Q. Okay. When you first sat down for those initial
 22 interviews, was there a focus of who you were providing
 23 information about at first?
 24 A. Yes.
 25 Q. And who was that?

1 A. The Rice brothers.
 2 Q. And did you ultimately, though, provide information about
 3 everything that you had been involved in during that
 4 timeframe?
 5 A. Yes.
 6 Q. Okay. And did you ultimately plead guilty?
 7 A. Yes.
 8 Q. Okay. Showing you what's been marked as Government's
 9 Exhibit 1 and 2, do you recognize those documents?
 10 A. Yes.
 11 Q. What are they?
 12 A. Plea agreements.
 13 Q. And what did you plead guilty to?
 14 A. Racketeering, conspiring to sell cocaine and heroin, and
 15 distribution.
 16 Q. And, just so we're clear, between February of '05, when
 17 you were arrested, and when you pled guilty in court, where
 18 were you?
 19 A. Pretrial -- in counties. Different counties.
 20 Q. You were in jail?
 21 A. Correct.
 22 Q. Okay. So, for, you know, about 15 months, you were
 23 actually in jail?
 24 A. Yes.
 25 Q. Okay. What happened after you pled guilty? Where did

1 you go?
 2 A. When I -- after I pled guilty?
 3 Q. Uh-huh.
 4 A. I was released on pre -- on home confinement.
 5 Q. Okay. And, without telling -- not exactly where you
 6 went, did you do your home confinement somewhere outside of
 7 the state of Maryland?
 8 A. Yes.
 9 Q. And why was that?
 10 A. For safety reasons.
 11 Q. Were you allowed to travel when you were on home
 12 confinement?
 13 A. Yes.
 14 Q. Okay. And did you travel anywhere when you were on home
 15 confinement?
 16 A. Yes.
 17 Q. Okay. Did you enter your guilty plea in front of
 18 Judge Quarles?
 19 A. Yes.
 20 Q. In this courtroom?
 21 A. Yes.
 22 Q. Okay. After you pled guilty, were you ever threatened
 23 for the fact that you had pled guilty?
 24 A. No.
 25 Q. Did you ever hear about whether there were any

1 retaliation efforts against you?

2 MR. TICKNOR: Objection.

3 THE COURT: Overruled.

4 THE WITNESS: Yes.

5 Q. (BY MS. KOWITZ) Okay. And what did you hear, if
6 anything?

7 A. That -- that someone had put a contract on me.

8 Q. And what does that mean?

9 A. Someone's putting out money to get me killed.

10 Q. And did you ever hear how much money that got up to?

11 A. Yes.

12 Q. What was that?

13 A. 100,000.

14 Q. But did you still continue to cooperate with the
15 Government?

16 A. Yes.

17 Q. As part of your plea agreement, what was the maximum term
18 of imprisonment you could have gone to jail for if you hadn't
19 pled guilty?

20 A. Life.

21 Q. And did you know whether there was a minimum term that
22 you'd have to serve?

23 A. Yes.

24 Q. And what was that?

25 A. Twenty.

1 Q. And was there a quantity of drugs that you agreed to in
2 your Statement of Facts when you pled guilty?

3 A. Yes.

4 Q. And what was that?

5 A. 1,500 or more keys.

6 Q. Of cocaine?

7 A. Yes.

8 Q. Now, turning your attention to Government's Exhibit
9 Number 2, is that an amendment to the plea agreement?

10 A. Does it say, "Amendment"?

11 Q. Yeah. So, turning your attention to Government's Exhibit
12 Number 2, does that look similar in terms of --

13 MR. TICKNOR: We'll stipulate it's a supplement to
14 the guilty plea that is involved in cooperation, if that will
15 help.

16 MS. KOWITZ: Just trying to --

17 THE COURT: Stipulated.

18 MS. KOWITZ: Perfect, Judge.

19 Q. (BY MS. KOWITZ) So, turning your attention to
20 Government's Exhibit Number 2, on the first page, what does it
21 say? What does it read where my finger is pointing?

22 A. "Obligations of the Defendant."

23 Q. And is that what you had to do?

24 A. Yes.

25 Q. And what were you agreeing to do as part of that

1 supplement?

2 A. That I would be truthfully in everything that I
3 discussed.

4 Q. Did it obligate you to do anything beyond talk to law
5 enforcement?

6 A. No.

7 Q. Well, what are you doing right now?

8 A. I'm talking in front of the Court.

9 Q. Okay. Did you have to testify if asked to?

10 A. Yes. Oh, yes. Yes.

11 Q. Okay. When you testified in the Willie Mitchell trial,
12 was that part of what you had agreed to do?

13 A. Yes.

14 Q. Okay. And would you have had to testify against the Rice
15 brothers if they hadn't pled guilty?

16 A. Yes.

17 Q. Okay. And is being here today part of the agreement that
18 you made with the Government back then?

19 A. Yes.

20 Q. If you had your choice, would you be sitting here today?

21 A. Absolutely not.

22 Q. Okay. Did there come a time when you heard that
23 Darnell Young had been arrested?

24 A. Yes.

25 Q. Okay. And did there come a time when you knew he was

1 going to be sentenced?

2 A. Yes.

3 Q. And did you come to court ready to testify?

4 A. Yes.

5 Q. Okay. Just fast-forwarding for the sake of time, March
6 of 2009, were you sentenced in this case?

7 A. Yes.

8 Q. Okay. And did the Government come in and ask the Court
9 to give you a reduced sentence based on your cooperation?

10 A. Yes.

11 Q. And what was your sentence?

12 A. Forty-eight months.

13 Q. Where did you serve your time?

14 A. The remainder of it, in Pensacola, Florida.

15 Q. A federal facility?

16 A. Yes.

17 Q. Okay. And then you were released in April of 2010?

18 A. March 2010.

19 Q. Oh, March 2010. Okay. And then you spent time at a
20 local halfway house?

21 A. Yes.

22 Q. Okay.

23 MS. KOWITZ: Your Honor, nothing further.

24 THE COURT: Thank you. Cross?

25 MR. TICKNOR: Thank you, Your Honor.

CROSS-EXAMINATION

Q. (BY MR. TICKNOR) Mr. Clash, you talked a lot about quantities and deals that were made. Do you have any tally sheets that you personally developed showing how much was given to various and sundry people?

A. No.

Q. Were there any recovered from any searches of your homes or other facilities?

A. No.

Q. Do you have any letters that were written to other individuals in which you talk about what you were doing during the time that you were doing it?

A. No.

Q. Are there any recorded documents whatsoever that you know of that would support what you've said in terms of numbers?

A. No.

Q. Okay. So essentially what we have here today is your best guess as to what was happening back in 1998, '99, 2000, 2001, 2002, correct?

A. Correct.

Q. Is that fair? Okay.

You indicated that, in spring of 1998, you began selling some drugs to Mr. Young. That was your previous testimony; is that correct, sir?

A. Yes.

Q. When you say, "spring," do you have a better recollection of when that might have been in 1998? Was it warm? Was it cold? Do you have anything that would allow us to pin down at all when spring of 1998 might have occurred?

A. No.

Q. Okay. And you indicated that you didn't start selling nine ounces to him until late in 1998; is that right?

A. Yes.

Q. But your supply dried up in October of 1998, so it would have been a short period of time that you were selling nine ounces to him if you started selling late in 1998; isn't that correct?

A. Yes.

Q. Okay. And, again, going to 2000, you again used the term, "spring." Can you assist us in any way in determining what month in the spring, or summer, because that was the two questions that were asked -- whether it was spring or summer -- in 2000 when you first started reselling to

Mr. Young?

A. May of 2000.

Q. May?

A. Yes.

Q. Okay. And that continued to fall of 2000?

A. Yes.

Q. Okay. And do you recall when in the fall of 2000 that

1 might have been?

2 A. September, October.

3 Q. And you didn't sell at all in 2001 to him; is that right?

4 A. Can you repeat the question?

5 Q. You did not sell anything to Mr. Young in the year 2001?

6 A. Correct.

7 Q. Okay. These photographs that are taken from these parties that were introduced as Government's Exhibit 3, 4, and 5, those were parties in which people came and had a good time 10 and paid an entrance fee; is that right?

11 A. Yes.

12 Q. Okay. And the Defendant was there as a DJ?

13 A. Yes.

14 Q. Okay. And it would not be unusual for someone to take photographs with the DJ?

15 A. Yes.

16 Q. Okay. It wouldn't be unusual to take photographs of anybody under those circumstances?

17 A. Correct.

18 Q. Okay. Now, you've indicated that, when you first started talking to the Government, to the agents and so forth, was sometime in 2005, right?

19 A. The end of 2005.

20 Q. Okay. The end of 2005?

21 A. December.

1 Q. December of 2005. And, at that time, you were talking 2 about the Rice brothers, because that was the interest of the 3 Government?

4 A. Correct.

5 Q. Okay. But you met with them again in January of 2006; 6 did you not, sir?

7 A. Correct.

8 Q. And again in March of 2006?

9 A. Yes.

10 Q. And April of 2006?

11 A. No.

12 Q. And you had a guilty plea in May of 2006; is that right?

13 A. Yes.

14 Q. Okay. Up to the time of your guilty plea, you hadn't mentioned Mr. Young at all, had you?

15 A. Yes, I had.

16 Q. Okay. Do you know whether the agents wrote down what you

17 said about him?

18 A. No, I don't.

19 Q. Okay. You've not reviewed any of the notes of the agents 20 as to when and where your mention of Mr. Young --

21 A. No.

22 Q. -- first occurred?

23 All right. But, in your guilty plea, in the Statement of Facts, if you'll turn to Government's exhibit on

1 Page 4, Paragraph 6(a), you mentioned a fair number of people
2 in that Statement of Facts; is that correct, sir?
3 A. Yes.
4 Q. Mr. Young's not in that list of individuals, is he, sir?
5 A. Correct.
6 Q. Okay. And this plea agreement was made on May 17th or
7 thereabouts of 2006. That's the date of the letter. I'm not
8 sure exactly what date you signed it. What date did you sign
9 it, sir?
10 A. I'm not sure.
11 Q. Okay. But it was sometime before your guilty plea on
12 May 24th, 2006?
13 A. Correct.
14 Q. In this plea agreement, between the original and the
15 supplement, you were supposed to start at Level 38 because of
16 the amount of drugs; is that correct? Calling your attention
17 to Page 5 and the sentencing guidelines factors under Count 3.
18 A. Yes.
19 Q. Okay. Now, that's based upon the weight of the drugs; is
20 that right?
21 A. Correct.
22 Q. Okay. But you testified against, and you've testified
23 here today that you did, in fact, appear as a witness for the
24 Government in the case of Mr. Mitchell, and you testified at
25 that time that you had been the victim of a stabbing at

1 Hammerjack's. Do you recall that?
2 A. Yes.
3 Q. And that, as a result of the stabbing at Hammerjack's,
4 rather than going to the police and identifying the person who
5 had stabbed you, you were going to involve yourself with your
6 cohorts to take your own revenge?
7 A. Correct.
8 Q. And that the manner in which you were going to take your
9 own revenge was to hire someone, and they would kill this
10 individual; is that correct, sir?
11 A. Yes.
12 Q. All right. Are you aware that, with that testimony and
13 with those facts, that you could have been cross-referenced in
14 your plea to a Level 43 for a solicitation or a murder? Do
15 you understand that, sir?
16 A. I didn't understand it.
17 Q. You did not understand it? You could have started at
18 Level 43 for being involved in at least one murder or
19 attempted murder?
20 MS. KOWITZ: Objection, Your Honor.
21 Q. That was never explained to you, sir?
22 THE COURT: Basis?
23 MS. KOWITZ: He said he didn't understand, so now
24 he's just saying so.
25 THE COURT: Okay.

1 Q. (BY MR. TICKNOR) You didn't understand that at any point
2 in your discussions with your attorney?
3 A. No.
4 Q. There was also a retaliation that was taken by cohorts
5 against someone for the kidnapping of your mother. Do you
6 remember that incident?
7 A. That's not me.
8 Q. What's that?
9 A. That's not me.
10 Q. Okay. All right. So your mother was never kidnapped,
11 and you were never involved in a retaliation against those
12 individuals?
13 A. No, my mother was never kidnapped, but I do know about
14 the retaliation.
15 Q. Okay. And you were involved in the retaliation? You
16 discussed the retaliation?
17 A. Yes.
18 Q. I'm sorry. Someone else's mother. It's hard to read
19 some of the blacked-out portions of these notes. So you were
20 talking to people about that shooting?
21 A. Yes.
22 Q. And, in fact, you had the gun at some point with which
23 that shooting occurred; is that right?
24 A. Yes.
25 Q. Okay. And, in that shooting, did someone die?

1 A. Well, I don't know if the -- I don't know if the gun that
2 I had was the actual gun or not.
3 Q. Okay. But you had one that was the same that you thought
4 was the one that had been used, right?
5 A. Yes.
6 Q. Okay. And you told them about that, thinking that it had
7 been used? When I say, "them," I mean the agents.
8 A. Correct.
9 Q. Okay. And let's go back to my other question. In that
10 incident, did someone die?
11 A. I don't know about that incident. I mean, I don't know
12 if that was the incident. I really don't know what incidents
13 you're talking about.
14 Q. When retaliation was taken against someone for the
15 kidnapping and you received a gun that you thought was used in
16 that retaliation, did that retaliation result in the death of
17 an individual?
18 A. Yes.
19 Q. And you're aware that your involvement in planning the
20 death of an individual could have resulted in a cross-
21 reference to murder and level 43?
22 A. Now I am aware.
23 Q. All right. And you received credit for safety valve in
24 your plea agreement, is that correct, sir, under Paragraph 3
25 of the sentencing guidelines factors? I think it's -- yes.

1 Paragraph 3, where it says, "SC1.2." It's at the top of
 2 Page 6, "Because the Defendant meets the criteria of SC1.2?"
 3 A. Okay.
 4 Q. Okay. Did you understand when you signed this plea
 5 agreement that the criteria for the safety valve is that you
 6 not have more than one point for your prior record?
 7 A. Correct.
 8 Q. But, in your prior record, you were convicted of
 9 possession with intent to distribute drugs; is that correct,
 10 sir?
 11 A. Correct.
 12 Q. And you were given a probationary period under a PBJ; is
 13 that right?
 14 A. Correct.
 15 Q. How long was that probationary period?
 16 A. Eighteen months.
 17 Q. Okay. And you received that probationary period in 1998.
 18 That's when you were convicted, right?
 19 A. Yes.
 20 Q. So you were on probation during the period of this
 21 conspiracy?
 22 A. Yes.
 23 Q. And are you aware that, under the sentencing guideline
 24 factors, you therefore should not have been given the SC1.2
 25 reduction, because, if you have more than one point on your

1 criminal history, which being convicted of a crime and
 2 receiving probation during the period of the conspiracy would
 3 have precluded -- you should not have gotten that --
 4 MS. KOWITZ: Objection, Your Honor.
 5 MR. TICKNOR: All right.
 6 THE COURT: Sustained.
 7 MR. TICKNOR: I mean, that's an argument. Okay.
 8 THE COURT: Sustained.
 9 Q. (BY MR. TICKNOR) In any case, after all was said and
 10 done, you got a sentence of 48 months on March 6th, 2009, with
 11 credit for approximately 15 months, I think. I mean, it was
 12 from February of 2005. You were locked up until May 24th of
 13 2006, right?
 14 A. Yes.
 15 Q. So that's about 15 months' credit that you had?
 16 A. Yes.
 17 Q. You're out, right?
 18 A. Correct.
 19 Q. You're not locked up in any way?
 20 A. No.
 21 Q. And this is approximately two years later, and you got
 22 out approximately one year after you were sentenced in this
 23 case; is that correct, sir?
 24 A. Yes.
 25 Q. Now, there were forfeitures that were brought against you

1 by the United States Government for, among other things,
 2 \$154,000 worth of personal items -- jewelry and other things.
 3 Do you recall that?
 4 A. Yes.
 5 Q. Did you get any of that back, or was any of that used to
 6 hire an attorney?
 7 A. Yes. I got -- well, to pay the balance of my attorney.
 8 Q. Okay. And were your houses ever forfeited?
 9 A. Yes.
 10 Q. Okay. How many houses did you have?
 11 A. Three.
 12 Q. Okay. And how many houses were forfeited?
 13 A. One.
 14 Q. Okay. And the remaining two houses are valued at about
 15 \$700,000; is that right?
 16 A. Wrong.
 17 Q. Okay. How much are the remaining two houses valued at?
 18 A. At the time?
 19 Q. At the time.
 20 A. 100,000.
 21 Q. How much are they valued at now, if you know?
 22 A. 60.
 23 Q. All right. I ran across something, and it's not very
 24 clear. I preface this that it's not very clear in the notes
 25 that I had from the interviews of you, but they seem to be

1 saying that, during this period of time, you were also selling
 2 handguns?
 3 A. No.
 4 Q. Is that correct? No? Okay. Like I say, that was not
 5 clear, and that's why I prefaced it in that fashion.
 6 You said that you had heard that you were
 7 threatened. Who did you hear that from?
 8 A. The Government.
 9 Q. Okay. So they gave you some information. Nobody came up
 10 to you on the street and said, "Jesus Christ, they're going to
 11 shoot you," right?
 12 A. No.
 13 Q. Okay. The Government told you that they had information
 14 that there was a contract. So all of that came from the
 15 Government, and not from your personal knowledge outside of
 16 your interplay with them?
 17 A. Correct.
 18 MR. TICKNOR: Thank you. I have no further
 19 questions at this time.
 20 THE COURT: Redirect?
 21 MS. KOWITZ: I just want to clear up one thing, Your
 22 Honor, about the gun and the kidnapping, because I
 23 actually want to make sure I understand at this point.
 24 REDIRECT EXAMINATION
 25 Q. (BY MS. KOWITZ) Whose mom was kidnapped?

Ex. 5

1 A. Howard's.
 2 Q. And were you involved in planning any retaliation for the
 3 kidnapping of Howard's mother?
 4 A. Not in planning, no.
 5 Q. Okay. Did you hear about it after it happened?
 6 A. After the kidnapping, or after the --
 7 Q. After any retaliation.
 8 A. No.
 9 Q. How did you ever know about any attempted retaliation of
 10 the person who kidnapped Howard's mother?
 11 A. Years later.
 12 Q. Okay. So this gun that we're talking about, whenever you
 13 had it, did you know that it was going to be used or was used
 14 to possibly retaliate against somebody who kidnapped Howard's
 15 mother?
 16 A. Yes, I did know that.
 17 Q. When?
 18 A. When -- when I gave it to them, which was '97, I think it
 19 was.
 20 Q. Who did you give it to?
 21 A. Eric Hall.
 22 Q. And, when you gave it to Eric Hall, did you know what he
 23 was going to do with the gun?
 24 A. I knew what his intentions were, yeah -- what his
 25 intentions were.

1 Q. Did he tell you?
 2 A. No, he didn't.
 3 Q. Did you talk about it?
 4 A. No, we didn't.
 5 Q. Okay. So is it because of this person, Eric Hall, is in
 6 the organization that you know he doesn't just collect them?
 7 A. Correct.
 8 Q. Okay. But did he tell you, "I'm exactly going to use it
 9 for this purpose"?

10 A. No.

11 MS. KOWITZ: Okay. No further questions.

12 THE COURT: Recess?

13 RECROSS-EXAMINATION

14 Q. (BY MR. TICKNOR) Did Eric Hall call you and say, "I need
 15 to come and pick up some heat," or something like that? "I
 16 need to pick up a gun"?

17 A. I can't recall how it went down.

18 Q. But the retaliation that was being planned, that was
 19 talked about by people? People knew about it, right?

20 A. Yeah, but this was -- I found out later, though, what was
 21 really going on, though.

22 Q. Okay. If Eric Hall had come to you and said, "I need
 23 this gun because I'm going to go shoot someone," would you
 24 have given him the gun?

25 MS. KOWITZ: Objection, Your Honor.

1 THE COURT: Sustained.
 2 MR. TICKNOR: All right. Thank you. No further
 3 questions.
 4 THE COURT: Thank you. Good day, sir. You may step
 5 down.
 6 (Witness excused.)
 7 THE COURT: Ms. Kowitz, any other evidence?
 8 MS. KOWITZ: No, Your Honor.
 9 THE COURT: Thank you. I will hear from you.
 10 MS. KOWITZ: Your Honor, as you recall, we are here
 11 back for resentencing based on a Fourth Circuit opinion, and
 12 I'm actually sort of anticipating an argument that I think
 13 Mr. Ticknor is going to make, but I think Mr. Ticknor is going
 14 to argue that Your Honor can decide whether or not it wants to
 15 rely on this evidence to find a drug quantity based on
 16 relevant conduct, and I just would like to cite to --
 17 THE COURT: You will point out the part that says I
 18 cannot ignore?
 19 MS. KOWITZ: Yeah. I would like to just -- I would
 20 like to point out that the Government is entitled to establish
 21 his relevant conduct through evidence that's not been
 22 presented at trial, and the District Court is obligated to
 23 consider the evidence, as long as it's reliable, for the
 24 purposes of calculating his advisory sentencing guidelines
 25 range. I just wanted to point that out.

1 THE COURT: I think that's well established, yea.
 2 MS. KOWITZ: Your Honor, I think Mr. Ticknor --
 3 MR. TICKNOR: I'm not going to argue that.
 4 MS. KOWITZ: Okay. Anyway, Your Honor, the
 5 Government submits that Mr. Clash's testimony clearly, in a
 6 most conservative way, establishes drug quantity for relevant
 7 conduct between 15 and 50 kilograms of cocaine. The
 8 Government believes that's a conservative estimate in light of
 9 the fact, when a person is convicted of conspiracy or is
 10 alleged to have been in a conspiracy, that sometimes the
 11 weights that are reasonably foreseeable to him could be
 12 attributed to him. The Government is being conservative in
 13 its estimate of probably approximately 38, on the low end, to
 14 43 kilograms of cocaine.
 15 There is nothing here to suggest that Mr. Clash is
 16 incredible in any way. Mr. Clash has testified in front of a
 17 jury in this courthouse, and Mr. Clash has been consistent
 18 throughout the information that he's provided to the
 19 Government from the beginning of the time that he began to
 20 cooperate with the Government.
 21 I will proffer to the Court that the report of
 22 investigation that Mr. Ticknor was talking about in trying to
 23 get Mr. Clash to say that he didn't talk about Mr. Young
 24 before he pled guilty, the last interview that's memorialized
 25 in this report of investigation is March of '06, and, you

1 know, it's unclear exactly when that may have been, but there
 2 is no suggestion that this all came after the fact, that
 3 Mr. Young just was something he threw in at the end because it
 4 would be helpful to him. His credibility just should not be
 5 at issue, and I think that Mr. Ticknor is likely to make sort
 6 of a fairness argument here, and I'm wondering if Your Honor
 7 would like me to submit on that until I hear from Mr. Ticknor,
 8 or if you'd like to hear from the Government in anticipation
 9 of that argument.

10 THE COURT: I won't require you to anticipate your
 11 rebuttal.

12 MS. KOWITZ: Okay. Thank you, Your Honor. I'd like
 13 to submit there.

14 THE COURT: Mr. Ticknor?

15 MR. TICKNOR: All right, Your Honor. I was not
 16 going to suggest that the Court could ignore the testimony
 17 that was given here today. It's very clear from the opinion
 18 that -- a number of things are clear from the opinion, but I
 19 want to make sure that they're clear on the record. One, they
 20 said, "By determining that the evidence presented at trial
 21 established that Young's crimes involved between 500 grams and
 22 less than five kilograms of cocaine, the jury in this case
 23 effectively acquitted Young of involvement with the
 24 distribution of more than five kilograms."

25 They then say, "There is no requirement that the

1 Government present its relevant conduct evidence at trial, nor
 2 is the District Court, at sentencing, bound by the evidence
 3 presented at trial when determining the quantity of the
 4 relevant evidence."

5 And, finally, they said, "The District Court, when
 6 imposing the sentence, did not give an indication that it
 7 would have imposed the same sentence even if it were not bound
 8 by the jury's drug quantity determination or if the sentence
 9 had been within a higher guideline range and the Court had
 10 determined that it would be too high."

11 I believe that is the state of the law as it now
 12 exists, but I also believe that, at one time when we had
 13 mandatory guidelines and Apprendi came along, the idea was
 14 that the jury had to make a finding that would not only punish
 15 the guilty, but would protect them against the kind of numbers
 16 that have been used.

17 I don't have any problem theoretically with the jury
 18 making a finding and getting over a particular hurdle to
 19 establish a sentencing area and then allowing the Government
 20 to patch onto that additional amounts. Where I intellectually
 21 have a difficulty with this is when the jury doesn't find
 22 that, and they have apparently or could have tried the case
 23 before the jury.

24 The Court saw the jury in this particular case.
 25 Would that jury have made the finding that the Government

1 would have wanted to get them up to the higher level? I think
 2 not based upon the transcript I read, because they had things
 3 they could have done under those circumstances and chose not
 4 to do them.

5 We now have a situation where we can have the jury
 6 make one finding, and then the Court can enhance on acquitted
 7 conduct, which is essentially what we have here.

8 THE COURT: That's --

9 MR. TICKNOR: That's the state of the law.

10 THE COURT: That's not a new thing in the law.

11 MR. TICKNOR: It's not a new thing.

12 THE COURT: I enhanced on the basis of the gun. He
 13 was acquitted on the gun.

14 MR. TICKNOR: Right. I agree that you did, sir,
 15 and, under Watts, I believe you had the authority to do so. I
 16 just have problems with the amount in this particular case --

17 THE COURT: That's understandable, Mr. Ticknor.

18 MR. TICKNOR: -- and I think it --

19 THE COURT: It rests on testimony. It rests on
 20 testimony rather than on the seizure, which was close, 4.997
 21 kilograms, which is obviously what influenced the jury
 22 finding, because I guess they essentially ignored the
 23 testimony or at least didn't credit it sufficiently beyond a
 24 reasonable doubt to get beyond five kilograms.

25 MR. TICKNOR: Now, I am going to make a fairness

1 argument, Your Honor, and the Government could have
 2 anticipated that because of what I filed. I look at
 3 Mr. Clash, who was a major player, no question about it by his
 4 own testimony, by his plea agreement that's been introduced.
 5 He's involved with a violent organization. There is no
 6 indication whatsoever that my client actually was involved in
 7 violence. There was a gun bump in this particular case, but
 8 there was no testimony or evidence that that was ever used in
 9 the manner that the one was used in retaliation by Eric Hall,
 10 and he's planning -- because he gets stabbed at Hammerjack's,
 11 he's planning with them to go out and kill somebody, and he
 12 got a sentence of 48 months, of which he served 12, with
 13 credit for 15 months before, and I --

14 THE COURT: Well, you say that as if he wasn't in a
 15 jail cell for 15 months before.

16 MR. TICKNOR: Well, he wasn't -- he was --

17 THE COURT: He got credit for time served.

18 MR. TICKNOR: Right. I understand that, and I'm not
 19 making light of that. I mean, I'm just saying he got 15
 20 months, and then he served another 12 months, but we're
 21 missing some time here, it seems to me, because that's 27
 22 months out of a 48-month sentence. If they were calculating
 23 it that way for my client, he'd be happy about it, but it
 24 isn't calculated that way for my client.

25 We also have a person who was theoretically looking

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1 at a Level 43 who got some reductions for things that were not
 2 brought to the Court's attention, I don't believe, and he ends
 3 up at 48 months. I understand the cooperation. I admire the
 4 cooperation, I truly do, when somebody is cooperating against
 5 a group that has a reputation for violence, and you know the
 6 reputation, because you were in there and you were violent,
 7 but, nonetheless, in this particular instance, I think he's
 8 been treated very well. I'm asking --

9 THE COURT: That's the reward for substantial
 10 assistance, Mr. Ticknor.

11 MR. TICKNOR: Yes, I understand that, Your Honor,
 12 but what we're saying here is my client went to trial and
 13 could be facing -- I mean, the Government has now argued that
 14 he should be within the area of 168 to 235 by their latest
 15 letter.

16 THE COURT: They've come down.

17 MR. TICKNOR: Yes, they've come down. Frankly, Your
 18 Honor, as I have said time and time again in my memorandum,
 19 136 is enough, really. I mean, because the way they worked
 20 Booker, Gall, et cetera, this District Court's discretion can
 21 trump the guidelines and can trump impropriety, if you will,
 22 or -- and I really think that the difference between these two
 23 people, even though we have substantial cooperation, has
 24 gotten to the point where now it's just too high.

25 THE COURT: I will give you a chance to allocute on

1 the sentence. Right now, you realize we're discussing the
 2 base offense level.

3 MR. TICKNOR: I'm sorry, Your Honor. I was
 4 allocuting on anything I could allocute on.

5 THE COURT: I will give you a chance to allocute on
 6 sentence.

7 MR. TICKNOR: All right, Your Honor. On the base
 8 offense level -- thank you. I had some problems with some of
 9 his estimates, Your Honor, frankly. In 1998, he starts in
 10 spring, but he's not quite sure when that might be. The drugs
 11 dry up in October, and it's late within the year that he gives
 12 my client nine grams, but, as I recall his estimate, which
 13 makes up part of what the Government is arguing, was -- let me
 14 make sure I don't misstate it here -- something around three
 15 kilograms.

16 THE COURT: Three kilograms from the spring of 1998
 17 to the fall of 1998 was his estimate.

18 MR. TICKNOR: Right. Now, a kilogram is 35.3
 19 ounces, and he's giving four and a half ounces a month, or
 20 twice a month, or nine ounces a month --

21 THE COURT: Four to nine and a half, he said.

22 MR. TICKNOR: Yeah, but he testified that nine
 23 didn't start until late in the year --

24 THE COURT: Yes.

25 MR. TICKNOR: -- and it dried up in October. So,

1 assuming that he was getting nine ounces, or giving nine
 2 ounces to my client during April, May, June, July, say, that
 3 would make --

4 THE COURT: Before you expend a great deal of energy
 5 there, the real problems your client has, I think, are the
 6 testimony about the spring through fall of 2000, 10 to 15
 7 kilograms, and the later period of from '02 to '03, the 20
 8 kilograms, which took him until February of '03 to sell. If
 9 you wish to talk about the nine and a half ounces, I will go
 10 through the nine and a half ounces with you --

11 MR. TICKNOR: Well, I have a better argument there.

12 THE COURT: -- but the problem for your client, I
 13 guess -- the principal problem is the 30 to 35 kilograms that
 14 Mr. Clash testified about.

15 MR. TICKNOR: Your Honor, all I can say about the --

16 THE COURT: I'll do the four ounces to nine and a
 17 half ounce computation if you want, but that's not where your
 18 client's problem is in terms of the math.

19 MR. TICKNOR: Well, I understand that, Your Honor,
 20 but the problem I have is, if we do the math for the earlier
 21 one and we look at what he estimated, he's wrong on his
 22 estimate.

23 THE COURT: And, therefore, I should not credit
 24 greatly the subsequent testimony? I understand your argument.

25 MR. TICKNOR: Well, we should reduce some of these

1 on his estimates. If he's wrong in one place, it's possible
 2 he's wrong in another. He has no notes, no way of telling you
 3 precisely, exactly what happened and when it happened except
 4 his best guess. My client's got a lot of time invested in a
 5 witness' best guess under these circumstances, and it's part
 6 of the problem I have with enhancing by a preponderance, is
 7 that, you know, essentially the Government --

8 THE COURT: That's a long-lost battle, Mr. Ticknor.

9 MR. TICKNOR: I know. I understand that, Your
 10 Honor, but it doesn't seem quite right under the circumstances
 11 where he has an error, or it appears that he has an error
 12 earlier on, and then comes up with the numbers that he came up
 13 with, Your Honor. I did not spend a whole lot of time on him
 14 about the larger numbers, frankly.

15 I did find that, from May to September of 2000, he
 16 was allegedly delivering some of these drugs to my client.
 17 That's a period of roughly six months, and, again, the
 18 estimate is probably high based upon his other testimony.

19 THE COURT: Of course the Government doesn't have to
 20 have a great deal of weight to get him into the bottom of the
 21 bracket --

22 MR. TICKNOR: Right.

23 THE COURT: -- because you've got almost five
 24 kilograms from his seizure at trial.

25 MR. TICKNOR: Yes.

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1 THE COURT: So you're really talking about a tad
 2 over 10 kilograms, and, even assuming some fair amount of
 3 discount, you're still easily at the lower end of the bracket
 4 of the 15 kilograms.

5 MR. TICKNOR: And the lower end, so that everybody
 6 understands, is 15, so -- I've made my argument. I think that
 7 there is an adjustment that's required, and --

8 THE COURT: I agree that you're right. I would not
 9 accept the totals at face value.

10 MR. TICKNOR: All right.

11 THE COURT: Government, do you want to say anything
 12 else?

13 MS. KOWITZ: The only thing I'd like to say is, to
 14 suggest that Mr. Clash was incredible based on estimates from
 15 1998 to 2000 and 2002, I don't think the math is so off that
 16 it should suggest the incredibility of Mr. Clash. I think
 17 that he was doing his best to give the benefit of the doubt
 18 and to not do what he could have done, which is come in here
 19 and say, "I sold him 20 every month." I mean, I think it
 20 actually goes to show how accurate and how careful Mr. Clash
 21 was frankly trying to be.

22 THE COURT: Thank you.

23 MR. TICKNOR: I never said that he was incredible.

24 THE COURT: I understand. At this point, we're
 25 trying to determine the base offense level, and I'm

1 instructed, of course, to consider all relevant conduct.

2 As I noted, on November 6th, 2006, the execution of
 3 search warrants at the Defendant's Ottawa Way, Owings Mills
 4 residence, the Government recovered 4.997 kilograms of
 5 cocaine, referring here specifically to the December 10, 2010
 6 revision to the presentence report at Paragraph 13. The
 7 question, then, is: Has the Government provided evidence
 8 sufficient to prove that it's more likely than not that the
 9 Defendant should be attributed with at least 15 kilograms of
 10 cocaine?

11 I think, on the testimony of Mr. Clash, even
 12 considering the possible arithmetic considerations in the
 13 spring through fall of 1998, the quantities, I think, are
 14 sufficient to establish that it's more likely than not that
 15 the Defendant dealt at least 15 kilograms of cocaine, and,
 16 again, the presence of almost five kilograms of cocaine on one
 17 occasion in 2006 is corroborative of the scale of the
 18 Defendant's operations.

19 Accordingly, I find that the appropriate base
 20 offense level is Offense Level 34. That is enhanced by two
 21 levels for the firearm, which the Government submitted at
 22 trial as sufficient evidence to convince the Court it was a
 23 proper enhancement. Accordingly, the relevant guidelines are
 24 those formed by Total Offense Level 36, Criminal History
 25 Category I.

1 I will hear from the Government on sentencing.
 2 MS. KOWITZ: Your Honor, the Government is asking
 3 that the Court sentence the Defendant within the advisory
 4 guidelines range. The Government still submits that that's
 5 probably a low estimate of Mr. Young's scale of drug
 6 organization activities. I'll remind the Court there was
 7 testimony at trial that, in addition to the five kilograms of
 8 cocaine that were in Mr. Young's house, there was also the
 9 co-defendant, who was arrested shortly after leaving
 10 Mr. Young's house with over \$50,000 worth of cash in a red
 11 duffle bag. I think to suggest that Mr. Young was an
 12 occasional drug dealer in small amounts of drugs is just not
 13 believable.

14 I recognize -- and I guess I'm anticipating, but I
 15 recognize the disparity between a 48-month sentence and even
 16 the low end of this guidelines sentence, and I think Your
 17 Honor sort of hit the nail right on the head. The current
 18 framework without a doubt provides a benefit to those who
 19 accept responsibility, accept responsibility early, and do
 20 their best to assist the Government in investigations and
 21 prosecutions of other individuals.

22 While it could be argued that Mr. Clash and
 23 Mr. Young have a great disparity in drug quantity, that
 24 disparity is no different in how they appeared before the
 25 Court. Mr. Young went to trial. He never accepted

1 responsibility for the five kilograms of cocaine that were
 2 found in his house, and he never assisted the Government with
 3 any other investigations, and certainly never was a
 4 cooperator.

5 I know Your Honor is perfectly aware of these
 6 things, but I would like to take just a couple of minutes for
 7 the record, that Mr. Clash testified or provided information
 8 against the Rice brothers organization, which anyone who is
 9 familiar with drug organizations in Baltimore City knows was
 10 one of the largest-scale drug organizations during the
 11 relevant time period, and was certainly responsible for
 12 excessive violence.

13 Mr. Clash also provided information against an
 14 individual by the name of Antoine Rich, who was also connected
 15 with substantial violence and who had effectively beaten
 16 charges like that in the city.

17 He then testified at the trial of Willie Mitchell,
 18 which was also a very high-profile, very violent case against
 19 another large drug organization in Baltimore City.

20 Mr. Clash, while, you know, maybe for purposes of
 21 this, he was not in jail, he was on home confinement in
 22 another state away from his entire family to be protected for
 23 this, and I think that that's a consideration in determining
 24 where Mr. Clash ended up, but I think the disparity in drug
 25 quantity between Mr. Clash and Mr. Young is not any bigger or

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1 any more meaningful or any more significant than how Mr. Young
 2 and Mr. Clash presented themselves in front of this Court.
 3
 4 THE COURT: Thank you, Ms. Kowitz.
 5 Mr. Ticknor, I'll hear from you on sentencing.
 6 MR. TICKNOR: Yes, Your Honor. First of all, I
 7 would like to thank the Government for, I think, a restrained
 8 manner in which they presented the factual evidence to this
 9 Court, notwithstanding my previous argument, but I do
 10 appreciate that, and --
 11
 12 THE COURT: Ms. Kowitz is eminently reasonable.
 13
 14 MR. TICKNOR: Now, we had spoken earlier about an
 15 objection to the presentence report. What we were objecting
 16 to was, one, the amount that had been established in the
 17 presentence report, which is two levels higher than has been
 18 proven and accepted by the Court.
 19
 20 THE COURT: The presentence report will be revised
 21 to reflect the original base of 34. The two-level enhancement
 22 will be added to that, and the total will be guidelines formed
 23 by Total Offense Level 36, Criminal History Category I.
 24
 25 MR. TICKNOR: And also, in as much as Mr. Young was
 convicted of between 500 grams and less than 5 kilograms on
 both Count 1 and Count 2, we would move to strike the
 mandatory minimum of ten years that it says on the presentence
 investigation for Count 1. It should be five years for
 Count 1, and five years for Count 2. It's a technical thing.

1 but that may have an effect upon --
 2
 3 THE COURT: That revision will be made.
 4
 5 MR. TICKNOR: All right. Your Honor, I've
 6 previously gone over the opinion of the Fourth Circuit. We
 7 wouldn't be here if the Court had indicated or if they had
 8 read into what the Court said, an indication that it would
 9 sentence to the 136 months regardless under the circumstances
 10 of this particular case, and we can do that --
 11
 12 THE COURT: Well, I tried to make it clear,
 13 actually, that I would not have. I teed it up for the
 14 Government's appeal.
 15
 16 MR. TICKNOR: Right. Yes, Your Honor. I am still,
 17 nonetheless, asking the Court to do so, because it seems to me
 18 that, when we have this kind of disparity between what's being
 19 proven at the trial and what's being sentenced to in the
 20 sentencing guidelines or in the sentencing hearing, Your
 21 Honor, what you have is a relatively small dog and a very
 22 large tail, and the tail is wagging it. It's Pennsylvania
 23 versus McMillan kind of stuff, in that what we have is -- and
 24 I won't cite to that for reasons known to the Court, but it
 25 seems to me that, you know, it's the wrong way. The whole
 Apprendi revolution was under the idea that we would promote
 having the juries determine some of this stuff, and --
 THE COURT: That was fleeting, wasn't it,
 Mr. Ticknor?

1 MR. TICKNOR: What's that?
 2
 3 THE COURT: That was fleeting, wasn't it?
 4
 5 MR. TICKNOR: It was, but I really enjoyed it, Your
 6 Honor, and the fact that he was there at a time when that was
 7 in existence, you know, it does sort of give me a chance to
 8 ask that it be tacked on in this particular instance, Your
 9 Honor.
 10
 11 We've got a six-year conspiracy here from 1997 to
 12 2003. Granted that some of the drugs occurred in one large
 13 chunk and the others occurred during the one-year period.
 14 Nonetheless, you know, when you have to extrapolate out over a
 15 long period of time, that gives a basis for a variance, Your
 16 Honor.
 17
 18 We have some post-incarceration rehabilitation to a
 19 certain degree in that he has been involved actively in the
 20 Education Over Incarceration Program, in which he mentors
 21 individuals.
 22
 23 THE COURT: And I would encourage him to continue
 24 that.
 25
 26 MR. TICKNOR: Yeah. It's caused some difficulty
 27 with some of the other individuals in the Bureau of Prisons
 28 who don't particularly care for the fact that he is in the
 29 process of rehabilitating himself at the same time that he's
 30 mentoring others, and there has been some friction as a result
 31 of that.

1
 2 THE COURT: You describe that well in your briefing,
 3 which I did review.
 4
 5 MR. TICKNOR: Okay. You have a 33-year-old man who
 6 has got a strong family background. Many of them are here --
 7 friends, neighbors.
 8
 9 THE COURT: I welcome them to this proceeding.
 10
 11 MR. TICKNOR: And he's going to have that kind of
 12 safety net when he gets out of jail, and I'm asking for that,
 13 because the question for the Court -- I think one of the major
 14 questions that's raised is: Will he be back? Is this a
 15 person who will be a recidivist?
 16
 17 I think he has an incredibly strong family
 18 background. He has work that's available. His agent could
 19 probably put him to work next week as a DJ if he were
 20 released, but he's not taking that for granted, because he's
 21 going to be considerably older when he gets out, and older DJs
 22 are not quite as popular. So he's taking whatever courses
 23 were available where he was located to try and learn other
 24 things, particularly fiber optics and computer software.
 25
 26 When I have visited him at MCAC, he is upbeat, he's
 27 gregarious, he's outgoing, and it's not an act; he's trying to
 28 make the best of the situation that he finds himself in. I
 29 think that's important in determining whether this person is
 30 going to be back, because he certainly doesn't want to be. He
 had no prior criminal record except for, I think, a reckless

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1 driving previously.
 2 So you've got somebody that's not used to being
 3 incarcerated who finds himself now being incarcerated and
 4 incarcerated for, at this point, 136 months. I hope, when we
 5 finish with this hearing, that we'll still be in the area of
 6 136 months.

7 I just don't think, Your Honor, given not only the
 8 leniency that was shown to Mr. Clash, but there was another
 9 individual, a Mr. Wynter, who I believe goes by the nickname
 10 of Clive, who received 70 months. You know, we've got Clash
 11 getting 48 months, Wynter getting 70 months, and Wynter is the
 12 Clive that Clash talked about, you know, that Clive was also
 13 dealing with my client. So you've got the two suppliers who
 14 are getting nothing, or relatively nothing, and you are
 15 getting my client, because of his inexperience in the federal
 16 system, because he felt that the search of his property was
 17 inappropriate and that the Court's ruling was incorrect, and
 18 he went to trial.

19 I wish I had been there then. We would certainly
 20 have -- there are ways, as the Court knows, of handling that,
 21 where you can preserve the right to appeal a pretrial
 22 determination and still not get yourself into the kind of bind
 23 that he got himself into, and that's no criticism of
 24 Mr. Needleman. Mr. Needleman did an incredibly good job in
 25 representing my client at the trial stage, but, nonetheless,

1 there were some options that would be available, and he might
 2 have known about those options but for the fact that he's
 3 never been here before.

4 The sentence that the Government is asking for
 5 through its presentation here today, I think, is just too high
 6 under these circumstances. I understand that the Court is no
 7 friend of drug dealers and never has been, but I think that
 8 there is a fairness component in this that ought to trigger a
 9 variance. I know it's not usual in this Court, but I would
 10 ask for it under these circumstances.

11 THE COURT: Please advise Mr. Young that he has the
 12 right to make a statement.

13 MR. TICKNOR: Mr. Young, please stand up. You have
 14 a right to make a statement to the Court if you wish. If you
 15 feel that I've covered everything for you, you don't have to.
 16 The Court is not going to hold it against you if you don't
 17 speak. If you do want to speak, then now is your time. This
 18 is your allocution.

19 He wants to speak, Your Honor.

20 THE COURT: Good morning, sir.

21 THE DEFENDANT: I'd like to thank everyone who came
 22 out today, all my family and friends, and I want to thank you,
 23 Your Honor, for the leniency you showed me the first time.
 24 I'd like to thank Mr. Ticknor for his hard work, always coming
 25 to see me and checking on me and stuff.

1 I just want to say that, you know, this has been a
 2 humbling experience for me. I've learned a lot of things. My
 3 character, my integrity, none of this reflects -- it's
 4 really --

5 THE REPORTER: I'm sorry. None of this? None of
 6 this? Say it again.

7 THE COURT: He couldn't hear you.

8 THE DEFENDANT: Oh, I'm sorry. My character, the
 9 person that I am, Your Honor, I just made a bad choice, you
 10 know. I've learned from my mistakes.

11 You know, it's really -- really a shame me seeing
 12 that the Government would want to punish me even more being as
 13 though, you know, my first time. You know, I never been in
 14 prison before. A month in jail could have taught me my
 15 lesson. I don't want anything to do with drugs. I don't even
 16 want to be around them type of people. I felt as though I'm a
 17 respected person in the community, and me being released into
 18 the community, I can change, because I'm someone that the
 19 community looks at as a respected person, and I can do a lot
 20 more good on the streets than I can in prison, Your Honor, and
 21 I just ask that you be a partner with me in my dreams.

22 I'm very passionate about my music, and this
 23 situation is really detrimental to me in far ways than prison
 24 could ever do to me, Your Honor, and I just ask that you be
 25 passionate with me in my dreams and give me a second chance,

1 and I thank you for the leniency the first time.

2 THE COURT: Thank you. Please remain standing, sir.
 3 The Defendant is 33 years old with one adult
 4 conviction for reckless driving, has one child, is a graduate
 5 of Edmondson High School, has spent the last 15 years as a
 6 self-employed DJ. He's apparently augmented this employment
 7 with the proceeds of a fairly substantial cocaine distribution
 8 conspiracy.

9 The jury convicted the Defendant of conspiracy to
 10 distribute and possess with intent to distribute 500 grams but
 11 less than 5 kilograms of cocaine. At resentencing, the
 12 Government established by a preponderance of the evidence that
 13 the Defendant did, in fact, deal in at least 15 kilograms of
 14 cocaine. His base level is adjusted upward by two levels for
 15 the possession of a loaded 9mm handgun, yielding a total
 16 offense level of 36, Criminal History Category I, and an
 17 advisory sentencing range of 150 to 235 months.

18 The Defendant is educated, has marketable skills, no
 19 noted drug or alcohol problem, and no significant health
 20 problems, which leads inevitably to the conclusion that the
 21 crime or, in fact, series of crimes, since a continuing course
 22 of conduct in dealing drugs was shown, was done purely for the
 23 money.

24 The Defense suggested a variance would be
 25 appropriate. The arguments are essentially that I should

1 disagree with or ignore the guidelines. Of course, I'm not
 2 permitted to do that. Also, they're suggesting that it is
 3 unfair to give the Government a second shot with evidence that
 4 the jury rejected, but of course the Government can rely on
 5 acquitted conduct.

6 The Defense suggests that a variance is appropriate
 7 because the Defendant will have a safety net when he's
 8 released, but the existence of a safety net -- that is, a
 9 group of friends and relatives who are able to help him
 10 readjust -- suggests another reason why he should not have
 11 engaged in the conduct and is further indication that there
 12 was no necessity beyond greed for engaging in the conduct.

13 He suggests and cites the good work that he's done
 14 in prison, and, as I said, I do encourage him to continue that
 15 good work, and, finally, he notes that Mr. Clash got better
 16 treatment. Unfortunately, when we live in a community where
 17 the "stop snitching" culture is alive and well, one of the
 18 ironic things that the existence of that culture does is that
 19 it raises the value of cooperation, because so few people
 20 cooperate, and those people who do cooperate get a much
 21 greater reward for that cooperation, because the cooperation
 22 is rare, and that is an appropriate use of the executive's
 23 discretion to do its difficult job of crime fighting.

24 I find, then, that a sentence at the bottom of the
 25 guidelines -- I think this is a case that is appropriately

1 resolved within the guidelines, and find that a sentence at
 2 the bottom of the guidelines is sufficient but not greater
 3 than necessary to reflect the seriousness of the offenses,
 4 provide just punishment for those offenses, and to afford
 5 adequate deterrence. I suspect there is, given the
 6 Defendant's age, limited need to protect the public, since the
 7 sentence will be sufficiently long that it can be hoped that
 8 he will have aged out of the inclination to crime.

9 Accordingly, Mr. Young, on Counts 1 and 2, I impose
 10 concurrent 188-month sentences. I impose on those counts
 11 five-year concurrent supervised release terms with the special
 12 condition that you provide requested financial information to
 13 the probation officer as required. I waive the imposition of
 14 fine, and reimpose the \$200 special assessment.

15 Do you understand the sentence, sir?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You have 14 days from today's date to
 18 file an appeal. If you cannot afford to pay a filing fee, you
 19 can appeal without paying a fee. Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Anything further from the Government?

22 MS. KOWITZ: No, Your Honor. Thank you.

23 THE COURT: From the Defense?

24 MR. TICKNOR: No, Your Honor.

25 THE COURT: Thank you. Good luck, Mr. Young.

1 THE CLERK: Please rise. This Honorable Court
 2 stands in recess.
 3 (Proceedings adjourned.)
 4
 5 I, Martin J. Giordano, Registered Merit Reporter and Certified
 6 Realtime Reporter, certify that the foregoing is a correct
 7 transcript from the record of proceedings in the
 8 above-entitled matter.

12 Martin J. Giordano, RMR, CRR

Date

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was engaged in, and the activities of which affected, interstate and foreign commerce, did knowingly, willfully, and unlawfully conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity, as set forth below.

The Pattern of Racketeering Activity

12. The pattern of racketeering activity, as defined in Title 18, United States Code, Sections 1961(1) and 1961(5), consisted of the following acts:

Racketeering Act One – Conspiracy to Distribute and Possess with Intent to Distribute Cocaine and Heroin

13. From at least in or about 1995 through in or about February 2004, in the District of Maryland and elsewhere, **HOWARD RICE, a/k/a "Howie," a/k/a "H," RAESHIO RICE, a/k/a "Whip," a/k/a "Goodie," ANTHONY LEONARD, a/k/a "Ant," a/k/a "Cuzzo," STEVEN CAMPBELL, ERIC CLASH, a/k/a "Whiteboy," and ERIC HALL, a/k/a "E,"** the defendants herein, did knowingly, intentionally, and unlawfully combine, conspire, confederate, and agree with each other, and with others known and unknown to the Grand Jury, to distribute and possess with intent to distribute five kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance, and one kilogram or more of a mixture or substance containing a detectable amount of heroin, a Schedule I controlled substance, in violation of Title 21, United States Code, Sections 841(a), 841(b)(1)(A), and 846.

Racketeering Act Two – Possession with Intent to Distribute Cocaine

14. In or about December 1998, in the District of Maryland, **HOWARD RICE, a/k/a "Howie," a/k/a "H,"** the defendant herein, did knowingly, intentionally, and unlawfully

COUNT TWO

Racketeering Conspiracy

The Grand Jury for the District of Maryland further charges:

1. Paragraphs 1 through 10 and 12 through 24 of Count One of this Superseding

Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least in or about 1995 through in or about February 2004, in the

District of Maryland and elsewhere,

HOWARD RICE,
a/k/a "Howie,"
a/k/a "H,"

RAESHIO RICE,
a/k/a "Whip,"
a/k/a "Goodie,"

ANTHONY LEONARD,
a/k/a "Ant,"
a/k/a "Cuzzo,"

STEVEN CAMPBELL,
ERIC CLASH,
a/k/a "Whiteboy," and

ERIC HALL,
a/k/a "E,"

the defendants herein, together with others known and unknown to the Grand Jury, being persons employed by and associated with the RICE ORGANIZATION, an enterprise, which enterprise was engaged in, and the activities of which affected, interstate and foreign commerce, did knowingly, willfully, and unlawfully combine, conspire, confederate, and agree with each other, and with others known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1962(c), that is, to conduct and participate, directly and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity, as that term is defined in Title

18, United States Code, Sections 1961(1) and 1961(5), consisting of an act indictable under Title 21, United States Code, Section 846 (conspiracy to distribute and possess with intent to distribute cocaine and heroin); multiple acts indictable under Title 21, United States Code, Section 841 (possession with intent to distribute cocaine and heroin); and multiple acts indictable under Title 18, United States Code, Section 1959 (murder in aid of racketeering and conspiracy to commit the same). The pattern of racketeering activity through which the defendants agreed to conduct the affairs of the enterprise consisted of the acts set forth in Paragraphs 12 through 24 of Count One of this Superseding Indictment, which are incorporated as if fully set forth herein.

3. It was a part and an object of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the enterprise.

18 U.S.C. §§ 1962(d) and 1963

F. R. Crim. P. 7

Rule 7. The Indictment and the Information

(a) **When Used.**

(1) *Felony.* An offense (other than criminal contempt) must be prosecuted by an indictment if it is punishable:

- (A) by death; or
- (B) by imprisonment for more than one year.

(2) *Misdemeanor.* An offense punishable by imprisonment for one year or less may be prosecuted in accordance with Rule 58(b)(1).

(b) **Waiving Indictment.** An offense punishable by imprisonment for more than one year may be prosecuted by information if the defendant-in open court and after being advised of the nature of the charge and of the defendant's rights-waives prosecution by indictment.